

2001 DRAFTING REQUEST

Bill

Received: 09/05/2000

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Coomber

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous
Courts - costs and fees

Extra Copies:

Pre Topic:

DOA:.....Coomber -

Topic:

Court interpreters

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Handwritten notes below the table:
 15-2/Kmg
 7-07
 KJL
 2/17
 KJL
 2/17

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/4 - 2/4 kmg
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11/

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Topic:

Court interpreters

Instructions:

11/6. V. brief - do what Marcia says, send to me

See Attached

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12-10/19
KMG


10-20-00

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10-20-00

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<END>

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Wanted: As time permits

Identical to LRB:

For: Director of State Courts

By/Representing: David Suchman

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Court interpreters

Instructions:

See Attached

Mtg 10/17 with DSA - Brett C. & Jim Johnson & with DSCTs - Marcia V & David S.

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Identical to LRB:

For: Director of State Courts

By/Representing: David Suchman

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

*Marcia Vandercooke
267-9375*

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Court interpreters

Instructions:

See Attached

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		<i>/p3 - 10/30 Kmg</i>	<i>KJF 10/4</i>	<i><END> KJF/pg 10/4</i>			

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Bill

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Wanted: **As time permits**

Identical to LRB:

For: **Director of State Courts**

By/Representing: **David Suchman** 7-9335

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1** *Marsha Vandercooly*

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Pre Topic:

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FE Sent For:

<END>

Vandercook, Marcia

To: Suchman, David
Subject: RE: Statutory Changes

Looks good.

-----Original Message-----

From: Suchman, David
Sent: Thursday, August 10, 2000 7:44 AM
To: Vandercook, Marcia
Subject: Statutory Changes

I am assuming that what we will discuss with Bob Nelson this morning, in addition to the changes in 885.37, includes:

- restriction on the time in which reimbursement requests can be submitted to the court. *Quarterly,*
- a cap on what counties can be reimbursed for
- cost of living increase to the above *look*
- creation of new appropriation and language so we can charge fees and spend the money on what we charge for workshops, etc.

Hopefully, we are on the same page.

David Suchman

*Pay bills - restrict when
can be submitted*

*Program revenue appropriation for
fees charged for training &
certification for use to pay
for training & certification*

Director of ST Ct's

P/10

David Suchman

Marcia Vandercoff - Interpreters

- ADA compliance

- witnesses, parties, & parents (only in juvenile)

- All persons who are interpreters -- regardless of income

- For civil cases, allow 1st fees ~~that~~ as cost

All cases, not just crim, MH & juvenile

Certification of interpreters by

Certified interpreter - per rule created by VSCTs & approved by SCJ. Sec 45.27(1)

Right to certified int. if available
If not available, look to Ct. to determine int. to be used is of best quality of models

Do not charge fee for
municipal ct. interpreters

The fees includes those
pd. by § 19.67 (1)(b)

Payment of all ct.
int fees up to hourly
maximum.

Reimbursement rate - not payment
rate

Check privilege statute.

State v. Hildley Ct. of
Appeals App Ap/May
4th district

ct. -

Limited English proficiency

legal services not provided but
under s. 885.37

leave "hearing impaired" in ch 46

COURT INTERPRETER ACT

Repeal: s. 885.37 is repealed and recreated as follows:

885.37 (1) Policy Declaration

It is hereby declared to be the policy of this state to secure the rights, constitutional and otherwise, of persons, who either because of a non-English speaking background or because they are deaf or hard-of-hearing, have difficulty in adequately understanding or communicating in the English language when they appear in courts or are involved in court-ordered obligations.

It is the intent of this Act to provide appointment and use of qualified interpreters to secure the proper administration of justice in all proceedings taking place in courts of record in Wisconsin.

The legislature is convinced that having qualified interpreters when the need arises increases the integrity, efficiency and accountability of court proceedings.

Comment: Taken from the Model Interpreter Act with revisions as necessary to implement the choices of the committee.

(2) Definitions

For the purpose of this act, the following words have the following meaning:

- A. "Non-English speaking person" means any person who:
1. By reason of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings or,
 2. Any person who is speech impaired and any person who is deaf and blind who has difficulty either understanding or communicating in the English language.
- B. "Legal Proceeding" means:
1. Any criminal or civil proceeding in any court of record in Wisconsin in which the Non-English speaking person is a principal party in interest or witness, or
 2. Any proceeding where the Non-English speaking person is a parent or legal guardian of a principal party in interest under Chapters 48, 938, 51, 55 or is the parent or legal guardian of an alleged victim in any criminal proceeding, or
 3. In the case of a person with an above listed disability, any proceeding where the person is called to jury duty.
- C. "Certified Interpreter" means a person who; (1) is readily able to interpret simultaneously and consecutively and to sight translate from English to the language of the non-speaking person or from the language of that person into English; (2) is certified according to the procedures approved by the Wisconsin Supreme Court; and (3) satisfies the standards prescribed and

promulgated pursuant to this Act and the Code of Professional Responsibility for Interpreters established in this state.

- D. "Otherwise qualified interpreter" means a person who meets all the prerequisites of a certified interpreter as prescribe in (2)© of this statute except the person has not passed the test for certification according to the procedures approved by the Wisconsin Supreme Court.
- E. "Intermediary Interpreter" means a deaf or hearing impaired interpreter who holds a reverse skills certificate by the state or is certified by the registry of interpreters for the deaf with a reverse skills certificate, who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a deaf or hearing impaired person and a certified or otherwise qualified hearing interpreter.
- F. "Principal Party in Interest" means a person involved in a legal proceeding who is a named party or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.
- G. "Witness" means anyone who testifies in any legal proceeding.
- H. "Assistive Communication Device" means any equipment designed to facilitate communication by a disabled person.
- I. "Disabled person" means any person who cannot readily understand or the proceedings because of deafness or a physical hearing impairment or cannot communicate in the proceedings due to either a physical speaking impairment or in relation to deafness or physical hearing impairment.

(3) Implementing Responsibilities

- A. The supreme court shall be responsible for ensuring language interpreter training, certification, continued proficiency, discipline and rate of pay. The Supreme Court shall proscribe standards and procedures for recruitment, testing, certification, evaluation, compensation, duties, professional conduct, continuing education, certification renewal and other matters relating to interpreters as prescribed in this act.
- B. Staff and administrative support required by the supreme court to implement the interpreter certification program shall be provided by the Director of State courts.
- C. Pursuant to Supreme Court rule, the Director of State Courts shall administer and manage the operations of the State Court Interpreter Program.
- D. The Director of State Courts shall collect and analyze statistics pertinent to interpreter utilization. This report may be made a part of the annual report to the judiciary, and contain analyses and recommendations for the improvement of the court interpreter system.

(4) Appointment of a Certified Interpreter or Otherwise Qualified Interpreter or Intermediary Interpreter

- A. In any legal proceeding, the court shall appoint a qualified interpreter whenever it is necessary:
 - 1. To interpret the proceedings of a non-English speaking person; or
 - 2. To interpret the testimony of non-English speaking party or witness; or
 - 3. To assist the court in performing the duties and responsibilities of the court.
- B. When an interpreter is requested or when the court determines that a non-English speaking person has a limited ability to understand and or communicate in English, an interpreter shall be provided without regard to ability to pay.
- C. If there is a substantial probability that the legal rights of a non-English speaking person will be determined by the decision or action scheduled before the court or that the person will be foreclosed from pursuing his or her legal rights by the decision or action, a certified interpreter should be provided if available. The court shall make every effort to have a certified reporter for the proceeding. Only if, after diligent, good faith efforts to obtain a certified reporter have been made and none has been found to be reasonably available, may the court then provide "an otherwise qualified reporter." In such a case, a summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record of the legal proceeding.
- D. If the legal proceeding is not one which will determine legal rights or foreclose legal rights, the court may, in its discretion, provide either a certified interpreter or a qualified interpreter, whichever is more readily available.
- E. In any legal proceeding, before appointing an "otherwise qualified interpreter", the court shall make a finding that the proposed "otherwise qualified interpreter" appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting, and that the proposed "otherwise qualified interpreter" has read, understands, and will abide by the Code of Professional Responsibility for interpreters established in this state.
- F. If the non-English speaking person is provided with an "otherwise qualified interpreter" in a proceeding under (4) (d) this does not relieve the court of the obligation to thereafter proceed under (4) © when that type of proceeding is before the court.
- G. If a deaf or hearing impaired person requests an intermediary interpreter or a certified or otherwise qualified person requests an intermediary interpreter, the court shall on a showing of good cause, provide for such an interpreter.

} NO

(5) Waiver of Interpreter

- A. A non-English speaking person may at any point in the proceedings, waive the right to the services of an interpreter, but only when (1) the waiver is approved by the judge after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver; (2) the judge determines on the record that the waiver has been made knowingly,

intelligently, and voluntarily; and (3) the non-English speaking person has been afforded the opportunity to consult with an attorney.

- B. Where a non-English speaking person is dissatisfied with the interpreter selected by the court, that person may use any other certified or "otherwise qualified interpreter." However, if the substitution of another interpreter will delay the proceeding, good cause must be shown for the substitution. Unless the court has substituted interpreters for cause, the person using any interpreter other than the interpreter originally appointed by the court shall bear any additional costs beyond the amount required to pay the original interpreter.
- C. At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter to be appointed by the court.

(6) Interpreter Oath

- A. All interpreters, before commencing their duties, shall take a sworn oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The supreme court shall approve a uniform oath which will be made available to all judges in courts of record.
- B. Such oaths may be sworn to and maintained on file for all interpreters who are regularly appointed by the court. During cases where the court is the finder-of fact, this procedure shall be considered to satisfy (6)(a) of this statute. However, the oath shall be read and sworn to in open court in all proceedings conducted before a jury.

(7) Removal of Interpreter in Individual Cases

- A. Any of the following actions shall be good cause for the court to remove an interpreter:
 - 1. Being unable to interpret adequately, including where the interpreter self-reports such inability;
 - 2. Knowingly and willfully making false interpretation while serving in an official capacity.
 - 3. Knowingly and willfully disclosing confidential or privileged information while serving in an official capacity.
 - 4. Failing to follow other standards prescribed by the law and the code of professional responsibility for interpreters.
 - 5. Being unable to work cooperatively with the person in need of an interpreter or the counsel for that person.
 - 6. Any other circumstance that the court believes to be good cause.
- B. Any party may object to use of any interpreter for good cause.

(8) Assistive Communication Devices

This statute shall not be construed to mean that if a non-English speaking person has difficulty understanding or communicating in the English language, that interpretive services are the only services which may be provided. In any proceeding where the non-English speaking person requests it and shows cause why an assistive communication device will better serve the person's understanding or communication during court proceedings, the court shall make available, at no cost to the person, any appropriate assistive communication device.

(9) Cost of Interpreter Services and Assistive Communications

In all legal proceedings, the cost of providing interpreter and assistive communication services shall be borne by the state. This provision shall not, however, preclude the court from using its inherent authority to direct that some other governmental entity incur all or part of the cost as individual circumstances may warrant.

Current

20.625 Circuit courts.

There is appropriated to the director of state courts for the following programs:

(1) COURT OPERATIONS. (a) Circuit courts. A sum sufficient for salaries and expenses of the judges, reporters and assistant reporters of the circuit courts.

...

(c) Court interpreter fees. The amounts in the schedule to pay interpreter fees under s. 885.37 (4) (a) 2.

20.680 Supreme court.

There is appropriated to the supreme court for the following programs:

...

(2) DIRECTOR OF STATE COURTS. (a) General program operations. The amounts in the schedule to carry into effect the functions of the director of state courts.

...

(j) Court information systems and interpreters. The amounts in the schedule for the operation of circuit court automated systems under s. 758.19 (4), the court of appeals automated information system and the supreme court automated information system and for the payment of interpreter fees under s. 885.37 (4) (a) 2. All moneys received under ss. 814.61, 814.62 and 814.63 that are required to be credited to this appropriation account under those sections and two-sevenths of the moneys received under s. 814.635 (1) shall be credited to this appropriation account. The supreme court may transfer moneys from this appropriation account to the appropriation accounts under sub. (1) (km) and ss. 20.625 (1) (km) and 20.660 (1) (k).

46.295 Interpreters for the hearing-impaired.

(1) The department may, on the request of any hearing-impaired person, city, village, town or county or private agency, provide funds from the appropriation under s. 20.435 (6) (a) and (hs) to reimburse interpreters for hearing-impaired persons for the provision of interpreter services.

(2) The department shall grant priority to requests to pay fees charged by interpreters for the following, in the following order:

(a) Emergencies.

(b) Medical, mental health, alcohol and drug abuse, psychiatric and psychological services.

(c) Legal services and civil court proceedings.

(d) Matters concerning law enforcement personnel.

(e) Matters concerning any federal, state, county or municipal agency.

(3) The department shall maintain lists of qualified interpreters under s. 885.37 (5) (b).

(4) The department may use as an interpreter for hearing-impaired persons only the following:

(a) An interpreter for hearing-impaired persons who is certified by the national registry of interpreters for the deaf.

(b) If an interpreter under par. (a) is unavailable, an interpreter for hearing-impaired persons whose qualifications have been determined appropriate by the department.

(5) The department may bill any public or private agency at the rates established by the department for interpreter services for hearing-impaired persons commensurate with the certification or qualification level of the interpreter providing services if the department determines that the agency is required under state or federal law to provide interpreter services to a hearing-impaired person or if the agency agrees to pay for the services.

(6) The department shall promulgate rules to implement this section.

History: 1995 a. 27 ss. 2271, 2417; Stats. 1995 s. 46.295.

59.14 Publication of ordinances and proceedings.

(4) The board may order public notices relating to tax redemption and other affairs of the county to be published in a newspaper printed in any other than the English language, to be designated in such order, whenever the board considers it necessary for the better information of the inhabitants of the county, and it shall appear from the last previous census that one-fourth or more of the adult population of the county is of a nationality not speaking the English language, and that there shall have been a newspaper published in the county continuously for one year or more in the language spoken by that nationality; but all of the notices shall also be published in a newspaper published in the English language as provided by law. The compensation for all of the publications shall be paid by the county ordering the publications, and shall be the same as that prescribed by law for publication in the English language; and no extra charge shall be allowed for translation in any case. No irregularity, mistake or informality in any such publication shall affect the validity or regularity of any tax redemptions or other legal proceedings.

History: 1987 a. 378; 1995 a. 201 s. 244; Stats. 1995 s. 59.14.

Sub. (1) discussed in reference to the effect of the failure to distribute and the requirements of distribution and publication. 62 Atty. Gen. 81.

Codification and publication of ordinances discussed. 70 Atty. Gen. 124.

227.44 Contested cases; notice; parties; hearing (administrative proceedings)

Hearing examiner did not abuse discretion in failing to use interpreter. *Kropiwka v. DILHR*, 87 Wis.2d 709, 275 N.W.2d 881 (1979).

756.001 State policy on jury service; opportunity and obligation to serve as juror.

(1) Trial by jury is a cherished constitutional right.

(2) Jury service is a civic duty.

(3) No person who is qualified and able to serve as a juror may be excluded from that service in any court of this state on the basis of sex, race, color, sexual orientation as

defined in s. 111.32 (13m), disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry or because of a physical condition.

(4) All persons selected for jury service shall be selected at random from the population of the area served by the circuit court. All qualified persons shall have an equal opportunity to be considered for jury service in this state and the obligation to serve as jurors when summoned under this chapter for that purpose. Any manual or automated method of selection that provides each qualified person with an equal probability of selection for jury service or that provides each prospective juror with an equal opportunity for assignment to a particular trial may be used.

(5) The presiding judge of each circuit court, or, if there is none, the circuit judge designated by the chief judge to supervise the jury system, shall be responsible for administering the jury system in that court and shall discharge that duty in an efficient, equitable and cost-effective manner, in accordance with this chapter. The clerk of circuit court, if delegated by and under the supervision of the judge responsible for administering the jury system, may select and manage juries under policies and rules established by the judges in that circuit court.

History: 1991 a. 271; Sup. Ct. Order No. 96-08, 207 Wis.2d xv (1997).

Judicial Council Note, 1996: Subsections (1) and (2) are based on prior s. 756.001 (1). Subsection (3) implements ABA Standard 4 by expanding the nondiscrimination clause of prior s. 756.01 (3) to all classes protected under the state equal rights statute, s. 101.22. Subsection (4) implements ABA Standard 3 and is based on prior s. 756.001 (2). Subsection (5), based on the same prior statute, implements ABA Standard 10. [Re SCO No. 96-08 eff. 7-1-97]

756.02 Juror qualifications.

Every resident of the area served by a circuit court who is at least 18 years of age, a U.S. citizen and able to understand the English language is qualified to serve as a juror in that circuit unless that resident has been convicted of a felony and has not had his or her civil rights restored.

History: Sup. Ct. Order No. 96-08, 207 Wis.2d xv (1997).

Judicial Council Note, 1996: This section, based on prior s. 756.01 (1), implements ABA Standard 4. [Re SCO No. 96-08 eff. 7-1-97]

756.03 Excuse; deferral.

(1) EXCUSE. The court to which a person is summoned for jury service may excuse the person from jury service if the court determines that the person cannot fulfill the responsibilities of a juror. The court shall not consider any structural limitations of a facility when making that determination.

(2) DEFERRAL. The court to which a person is summoned for jury service may, upon request of that person, defer to a later date set by the court the period in which the person must serve if the court determines that service as a juror would entail undue hardship,

extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice.

(3) **CLERK AUTHORIZED TO GRANT.** The judge responsible for administering the jury system in the circuit court may authorize the clerk of circuit court to grant excuses or deferrals under this section. The authorization may limit the grounds on which the clerk of circuit court may grant the excuse or deferral and may require persons seeking an excuse or deferral to document the basis for any excuse or deferral.

History: Sup. Ct. Order No. 96-08, 207 Wis.2d xv (1997).

807.14 Interpreters.

On request of any party, the court may permit an interpreter to act in any civil proceeding other than trial by telephone or live audiovisual means.

History: Sup. Ct. Order, 141 Wis.2d xiii (1987); 1997 a. 252.

Judicial Council Note, 1988: This section [created] allows interpreters to serve by telephone or live audio-visual means in civil proceedings other than trials, on request of any party and approval by the court. [Re Order effective Jan. 1, 1988]

Se Habla Everything: The Right to an Impartial, Qualified Interpreter. Araiza. Wis. Law. Scpt. 1997.

814.65 Fees of the municipal court.

(1) **COURT COSTS.** In a municipal court action, except an action for violation of an ordinance in conformity with s. 347.48 (2m), the municipal judge shall collect a fee of not less than \$15 nor more than \$23 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons or the action is tried as a contested matter. Of each fee received by the judge under this subsection, the municipal treasurer shall pay monthly \$5 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the municipality.

(2) **WITNESS AND INTERPRETER'S FEES.** The fees of witnesses and interpreters shall be paid as specified in s. 814.67.

(3) **ATTORNEY FEES.** A municipal court shall not impose and collect attorney fees.

(4) **TAXATION OF FEES AND COSTS.**

(a) Other than fees specified in sub. (1) and costs specified in par. (b), no fees or costs are taxable by a municipality to a party before a municipal court unless it is directly chargeable to the municipality as a disbursement, such as service of process costs.

(b) If service of process is accomplished by municipal personnel, the cost of the service prescribed under ss. 814.70 and 814.71, subject to any modification applicable under s. 814.705, is taxable regardless of whether a separate disbursement is made to specifically reimburse the municipal employe or agency.

(5) **COSTS AND FEES ON APPEAL.** On appeal from municipal court, the appellant shall pay the fee prescribed in s. 814.61 (8). The appellant shall also pay a fee of \$10 for the transcript prepared under s. 800.14 (5). Costs shall be as provided in s. 814.08.

History: 1981 c. 317; 1983 a. 107; 1987 a. 181, 389, 399, 403; 1989 a. 22; 1991 a. 26; 1997 a. 27.

814.67 Fees of witnesses and interpreters.

(1) The fees of witnesses and interpreters shall be as follows:

(a) For attending before a municipal judge, an arbitrator, or any officer, board or committee:

1. For witnesses, \$5 per day.
2. For interpreters, \$10 per one-half day or such higher fees as the municipality or county board may establish.

(b) For attending before any other court:

1. For witnesses, \$16 per day.
2. For interpreters, \$35 per one-half day.

(bg) For interpreters assisting the state public defender in representing an indigent in preparing for court proceedings, \$35 per one-half day.

(c) For traveling, at the rate of 20 cents per mile going and returning from his or her residence if within the state; or, if without the state, from the point where he or she crosses the state boundary to the place of attendance, and returning by the usually traveled route between such points.

(2) A witness or interpreter is entitled to fees only for the time he or she is in actual and necessary attendance as such; and is not entitled to receive pay in more than one action or proceeding for the same attendance or travel on behalf of the same party. A person is not entitled to fees as a witness or interpreter while attending court as an officer or juror. An attorney or counsel in any cause may not be allowed any fee as a witness or interpreter therein.

History: 1981 c. 317; 1987 a. 27; 1995 a. 27.

868.01 Uniform probate of foreign wills act.

(7) AUTHENTICATION AND TRANSLATION. Proof contemplated by this section may be made by authenticated copies of the will and the records of judicial proceedings with reference thereto. If the will has not been probated but is otherwise established under the laws of the jurisdiction where the testator died domiciled, its contents and establishment may be proved by the authenticated certificate of the notary or other official having custody of the will or having authority in connection with its establishment. If the respective documents or any part thereof are not in the English language, verified translations may be attached thereto and shall be regarded as sufficient proof of the contents of the documents unless objection is made thereto. If any person in good faith relies upon probate under this section the person shall not thereafter be prejudiced because of inaccuracy of such translations, or because of proceedings to set aside or modify the probate on that ground.

885.37 Interpreters for persons with language difficulties or hearing or speaking impairments.

(1) (a) If a court has notice that a person fits any of the following criteria, the court shall make the determinations specified under par. (b):

1. The person is charged with a crime.
2. The person is a child or parent subject to ch. 48 or 938.
3. The person is subject to ch. 51 or 55.
4. The person is a witness in an action or proceeding under subd. 1., 2. or 3.

(b) If a court has notice that a person who fits any of the criteria under par. (a) has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the court shall make a factual determination of whether the language difficulty or the hearing or speaking impairment is sufficient to prevent the individual from communicating with his or her attorney, reasonably understanding the English testimony or reasonably being understood in English. If the court determines that an interpreter is necessary, the court shall advise the person that he or she has a right to a qualified interpreter and that, if the person cannot afford one, an interpreter will be provided for him or her at the public's expense. Any waiver of the right to an interpreter is effective only if made voluntarily in person, in open court and on the record.

(2) A court may authorize the use of an interpreter in actions or proceedings in addition to those specified in sub. (1).

(3) (a) In this subsection:

1. "Agency" includes any official, employe or person acting on behalf of an agency.
2. "Contested case" means a proceeding before an agency in which, after a hearing required by law, substantial interests of any party to the proceeding are determined or adversely affected by a decision or order in the proceeding and in which the assertion by one party of any such substantial interest is denied or controverted by another party to the proceeding.

(b) In any administrative contested case proceeding before a state, county or municipal agency, if the agency conducting the proceeding has notice that a party to the proceeding has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the agency shall make a factual determination of whether the language difficulty or hearing or speaking impairment is sufficient to prevent the party from communicating with others, reasonably understanding the English testimony or reasonably being understood in English. If the agency determines that an interpreter is necessary, the agency shall advise the party that he or she has a right to a qualified interpreter. After considering the party's ability to pay and the other needs of the party, the agency may provide for an interpreter for the party at the public's expense. Any waiver of the right to an interpreter is effective only if made at the administrative contested case proceeding.

(3m) Any agency may authorize the use of an interpreter in a contested case proceeding for a person who is not a party but who has a substantial interest in the proceeding.

(4) (a) The necessary expense of furnishing an interpreter for an indigent person under sub. (1) or (2) shall be paid as follows:

1. In the supreme court or the court of appeals, the director of state courts shall pay the expense.

2. In circuit court, the director of state courts shall pay the expense.

2m. To assist the state public defender in representing an indigent in preparing for court proceedings, the state public defender shall pay the expense.

3. In municipal court, the municipality shall pay the expense.

(b) The necessary expense of furnishing an interpreter for an indigent party under sub. (3) shall be paid by the unit of government for which the proceeding is held.

(c) The court or agency shall determine indigency under this section.

(5) (a) If a court under sub. (1) or (2) or an agency under sub. (3) decides to appoint an interpreter, the court or agency shall follow the applicable procedure under par. (b) or (c).

(b) The department of health and family services shall maintain a list of qualified interpreters for use with persons who have hearing impairments. The department shall distribute the list, upon request and without cost, to courts and agencies who must appoint interpreters. If an interpreter needs to be appointed for a person who has a hearing impairment, the court or agency shall appoint a qualified interpreter from the list. If no listed interpreter is available or able to interpret, the court or agency shall appoint as interpreter another person who is able to accurately communicate with and convey information to and receive information from the hearing-impaired person.

(c) If an interpreter needs to be appointed for a person with an impairment or difficulty not covered under par. (b), the court or agency may appoint any person the court or agency decides is qualified.

History: Sup. Ct. Order, 67 Wis.2d 585, 760 (1975); 1975 c. 106, 199; Stats. 1975 s. 885.37; 1985 a. 266; 1987 a. 27; 1995 a. 27 ss. 7207 to 7209, 9126 (19); 1995 a. 77.

The cost of providing an interpreter under this section is shared; the public defender paying out-of-court costs and the director of state courts paying in-court costs. *State v. Tai V. Le*, 184 Wis.2d 860, 517 N.W.2d 144 (1994).

A court has notice of language difficulty under sub. (1) (b) when it becomes aware that a defendant's difficulty with English may impair his or her ability to communicate with counsel, to understand testimony or to be understood in English and does not hinge on a request from counsel for an interpreter. *State v. Yang*, 201 Wis.2d 721, 549 N.W.2d 769 (Ct. App. 1996).

When an accused requires an interpreter and witnesses are to testify in a foreign language, the better practice may be to have 2 interpreters, one for the accused and one for the court. *State v. Santiago*, 206 Wis.2d 3, 556 N.W.2d 687 (1996).

Se Habla Everything: The Right to an Impartial, Qualified Interpreter. Araiza. Wis. Law. Sept. 1997.

879.41 Fees in court.

Fees in court shall be allowed:

(1) To appraisers, an amount to be fixed by the court;

- (2) To jurors, the fees under s. 756.25;
 - (3) To witnesses and interpreters, the fees under s. 814.67, and to expert witnesses, the fees under s. 814.04 (2);
 - (4) Travel as fixed by the court;
 - (5) In cases not provided for, a fair compensation shall be allowed by the court.
- History: Sup. Ct. Order, 67 Wis.2d 585, 783 (1975); 1977 c. 187 s. 135; 1977 c. 449; 1981 c. 317 s. 2202.

887.26 Depositions without this state by commission.

...

(8) TRANSLATIONS. When the witness is unable to speak the English language, the judge of the court from which the commission issues may appoint some competent and disinterested person to translate the commission, rules, interrogatories and cross-interrogatories, or such part thereof as may be necessary, from the English into the language spoken by the witness; and such translation shall be sent to the commissioner in place of the original papers that have been translated. Upon the return of the commission and deposition, such judge shall in like manner cause the answers of the witness and the exhibits to be translated into English, as well as all other proceedings in a foreign language, and such translation to be filed. The translator shall append to all translations the translator's affidavit that the translator knows the English and such foreign language, and that in making such translation the translator carefully and truly translated such proceedings from the English into such foreign language or from the latter into English, and that such translation is correct. Such translation shall have the same effect as if all the proceedings were in English, but the trial court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in such foreign language for the purpose of correcting errors therein; and, if it shall appear that the first translation was in any respect so incorrect as to mislead the witness, the court may, in discretion, continue the cause for the further taking of testimony.

History: Sup. Ct. Order, 67 Wis.2d 585, 784 (1975); 1975 c. 218; 1977 c. 187 s. 135; 1977 c. 323 s. 16; 1981 c. 317 s. 2202; 1993 a. 486.

905.015 Interpreters for persons with language difficulties or hearing or speaking impairments.

If an interpreter for a person with a language difficulty or a hearing or speaking impairment interprets as an aid to a communication which is privileged by statute, rules adopted by the supreme court or the U.S. or state constitution, the interpreter may be prevented from disclosing the communication by any person who has a right to claim the privilege. The interpreter may claim the privilege but only on behalf of the person who has the right. The authority of the interpreter to do so is presumed in the absence of evidence to the contrary.

History: 1979 c. 137; 1985 a. 266.

906.04 Interpreters.

An interpreter is subject to the provisions of chs. 901 to 911 relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation.

History: Sup. Ct. Order, 59 Wis.2d R1, R162 (1973); 1981 c. 390; 1991 a. 32.

908.01 Definitions.

Confession made in Spanish to detective who took notes and reported in English is admissible under (4) (b). State v. Arroyo, 166 Wis.2d 74, 479 N.W.2d 549 (Ct. App. 1991).

When a person relies on a translator for communication the statements of the translator are regraded as the speaker's for hearsay purposes. State v. Patino, 177 Wis.2d 348, 502 N.W.2d 601 (Ct. App. 1993).

967.09 Interpreters may serve by telephone or video.

On request of any party, the court may permit an interpreter to act in any criminal proceeding, other than trial, by telephone or live audiovisual means.

History: Sup. Ct. Order, 141 Wis.2d xiii (1987); 1987 a. 403.

971.04 Defendant to be present.

If court is put on notice that accused has language difficulty, court must make factual determination whether interpreter is necessary; if so, accused must be made aware of right to interpreter, at public cost if accused is indigent. Waiver of right must be made voluntarily in open court on record. State v. Neave, 117 Wis.2d 359, 344 N.W.2d 181 (1984).

ARTICLE I. DECLARATION OF RIGHTS

Provision of interpreter by school district to student attending parochial school was permissible when provided as a part of a neutral program benefitting all qualified children without regard to the sectarian-nonsectarian nature of the school. Zobrest v. Catalina Foothills, 509 U.S. 1, 125 LEd 2d 1 (1993).

To: Marcia Vandercook
From: Rick Brown
Date: 6/28/00
Re: Draft of interpreter statute

*Look at
only*

Attached is the first draft of the statute. The committee is, of course, free to sift, winnow, pick apart and otherwise amend it. But at least this gives us the foot-in-the-door that David needs.

I started with the model SJI guide, plugging in or changing it as necessary to meet the committee's policy statements. Then, I went through the various state statutes and changed language in cases where the particular state said it better.

After reading Washington's, I added the part about "assistive communications devices" because I didn't want judges to think that the only way they could help a person with a disability would be by using an interpreter. Some disabled persons do better with assistive communicative devices than interpreters. (Like me, for example.)

I also added a part about "intermediary interpreters." I think Dcb Gorra could speak to that.

The rest, I hope, tracks what the committee wanted. If you have questions, let me know.

I did no drafting of the supreme court petition. I figure that can wait. It has to anyway since we have to wait until certification and training drafts are finalized.

COURT INTERPRETER ACT

Repeal: s. 885.37 is repealed and recreated as follows:

885.37 (1) Policy Declaration

It is hereby declared to be the policy of this state to secure the rights, constitutional and otherwise, of persons, who either because of a non-English speaking background or because they are deaf or hard-of-hearing, have difficulty in adequately understanding or communicating in the English language when they appear in courts or are involved in court-ordered obligations.

It is the intent of this Act to provide appointment and use of qualified interpreters to secure the proper administration of justice in all proceedings taking place in courts of record in Wisconsin.

The legislature is convinced that having qualified interpreters when the need arises increases the integrity, efficiency and accountability of court proceedings.

Comment: Taken from the Model Interpreter Act with revisions as necessary to implement the choices of the committee.

(2) Definitions

For the purpose of this act, the following words have the following meaning:

- A. "Non-English speaking person" means any person who:
 - 1. By reason of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings or,
 - 2. Any person who is speech impaired and any person who is deaf and blind who has difficulty either understanding or communicating in the English language.
- B. "Legal Proceeding" means:
 - 1. Any criminal or civil proceeding in any court of record in Wisconsin in which the Non-English speaking person is a principal party in interest or witness, or
 - 2. Any proceeding where the Non-English speaking person is a parent or legal guardian of a principal party in interest under Chapters 48, 938, 51, 55 or is the parent or legal guardian of an alleged victim in any criminal proceeding, or
 - 3. In the case of a person with an above listed disability, any proceeding where the person is called to jury duty.
- C. "Certified Interpreter" means a person who: (1) is readily able to interpret simultaneously and consecutively and to sight translate from English to the language of the non-speaking person or from the language of that person into English; (2) is certified according to the procedures approved by the Wisconsin Supreme Court; and (3) satisfies the standards prescribed and

promulgated pursuant to this Act and the Code of Professional Responsibility for Interpreters established in this state.

- D. "Otherwise qualified interpreter" means a person who meets all the prerequisites of a certified interpreter as prescribe in (2)© of this statute except the person has not passed the test for certification according to the procedures approved by the Wisconsin Supreme Court.
- E. "Intermediary Interpreter" means a deaf or hearing impaired interpreter who holds a reverse skills certificate by the state or is certified by the registry of interpreters for the deaf with a reverse skills certificate, who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a deaf or hearing impaired person and a certified or otherwise qualified hearing interpreter.
- F. "Principal Party in Interest" means a person involved in a legal proceeding who is a named party or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.
- G. "Witness" means anyone who testifies in any legal proceeding.
- H. "Assistive Communication Device" means any equipment designed to facilitate communication by a disabled person.
- I. "Disabled person" means any person who cannot readily understand or the proceedings because of deafness or a physical hearing impairment or cannot communicate in the proceedings due to either a physical speaking impairment or in relation to deafness or physical hearing impairment.

(3) Implementing Responsibilities

- A. The supreme court shall be responsible for ensuring language interpreter training, certification, continued proficiency, discipline and rate of pay. The Supreme Court shall proscribe standards and procedures for recruitment, testing, certification, evaluation, compensation, duties, professional conduct, continuing education, certification renewal and other matters relating to interpreters as prescribed in this act.
- B. Staff and administrative support required by the supreme court to implement the interpreter certification program shall be provided by the Director of State courts.
- C. Pursuant to Supreme Court rule, the Director of State Courts shall administer and manage the operations of the State Court Interpreter Program.
- D. The Director of State Courts shall collect and analyze statistics pertinent to interpreter utilization. This report may be made a part of the annual report to the judiciary, and contain analyses and recommendations for the improvement of the court interpreter system.

(4) Appointment of a Certified Interpreter or Otherwise Qualified Interpreter or Intermediary Interpreter

- A. In any legal proceeding, the court shall appoint a qualified interpreter whenever it is necessary:
 - 1. To interpret the proceedings of a non-English speaking person; or
 - 2. To interpret the testimony of non-English speaking party or witness; or
 - 3. To assist the court in performing the duties and responsibilities of the court.
- B. When an interpreter is requested or when the court determines that a non-English speaking person has a limited ability to understand and or communicate in English, an interpreter shall be provided without regard to ability to pay.
- C. If there is a substantial probability that the legal rights of a non-English speaking person will be determined by the decision or action scheduled before the court or that the person will be foreclosed from pursuing his or her legal rights by the decision or action, a certified interpreter should be provided if available. The court shall make every effort to have a certified reporter for the proceeding. Only if, after diligent, good faith efforts to obtain a certified reporter have been made and none has been found to be reasonably available, may the court then provide "an otherwise qualified reporter." In such a case, a summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record of the legal proceeding.
- D. If the legal proceeding is not one which will determine legal rights or foreclose legal rights, the court may, in its discretion, provide either a certified interpreter or a qualified interpreter, whichever is more readily available.
- E. In any legal proceeding, before appointing an "otherwise qualified interpreter", the court shall make a finding that the proposed "otherwise qualified interpreter" appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting, and that the proposed "otherwise qualified interpreter" has read, understands, and will abide by the Code of Professional Responsibility for interpreters established in this state.
- F. If the non-English speaking person is provided with an "otherwise qualified interpreter" in a proceeding under (4) (d) this does not relieve the court of the obligation to thereafter proceed under (4) © when that type of proceeding is before the court.
- G. If a deaf or hearing impaired person requests an intermediary interpreter or a certified or otherwise qualified person requests an intermediary interpreter, the court shall on a showing of good cause, provide for such an interpreter.

} NO

(5) Waiver of Interpreter

- A. A non-English speaking person may at any point in the proceedings, waive the right to the services of an interpreter, but only when (1) the waiver is approved by the judge after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver; (2) the judge determines on the record that the waiver has been made knowingly,

intelligently, and voluntarily; and (3) the non-English speaking person has been afforded the opportunity to consult with an attorney.

- B. Where a non-English speaking person is dissatisfied with the interpreter selected by the court, that person may use any other certified or "otherwise qualified interpreter." However, if the substitution of another interpreter will delay the proceeding, good cause must be shown for the substitution. Unless the court has substituted interpreters for cause, the person using any interpreter other than the interpreter originally appointed by the court shall bear any additional costs beyond the amount required to pay the original interpreter.
- C. At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter to be appointed by the court.

(6) Interpreter Oath

- A. All interpreters, before commencing their duties, shall take a sworn oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The supreme court shall approve a uniform oath which will be made available to all judges in courts of record.
- B. Such oaths may be sworn to and maintained on file for all interpreters who are regularly appointed by the court. During cases where the court is the finder-of fact, this procedure shall be considered to satisfy (6)(a) of this statute. However, the oath shall be read and sworn to in open court in all proceedings conducted before a jury.

(7) Removal of Interpreter in Individual Cases

- A. Any of the following actions shall be good cause for the court to remove an interpreter:
 - 1. Being unable to interpret adequately, including where the interpreter self-reports such inability;
 - 2. Knowingly and willfully making false interpretation while serving in an official capacity.
 - 3. Knowingly and willfully disclosing confidential or privileged information while serving in an official capacity.
 - 4. Failing to follow other standards prescribed by the law and the code of professional responsibility for interpreters.
 - 5. Being unable to work cooperatively with the person in need of an interpreter or the counsel for that person.
 - 6. Any other circumstance that the court believes to be good cause.
- B. Any party may object to use of any interpreter for good cause.

(8) Assistive Communication Devices

This statute shall not be construed to mean that if a non-English speaking person has difficulty understanding or communicating in the English language, that interpretive services are the only services which may be provided. In any proceeding where the non-English speaking person requests it and shows cause why an assistive communication device will better serve the person's understanding or communication during court proceedings, the court shall make available, at no cost to the person, any appropriate assistive communication device.

(9) Cost of Interpreter Services and Assistive Communications

In all legal proceedings, the cost of providing interpreter and assistive communication services shall be borne by the state. This provision shall not, however, preclude the court from using its inherent authority to direct that some other governmental entity incur all or part of the cost as individual circumstances may warrant.

COMMITTEE TO IMPROVE INTERPRETATION AND TRANSLATION IN THE WISCONSIN COURTS

COMMITTEE DESCRIPTION

The Director of State Courts has appointed a statewide committee to look at ways to improve language interpreting and translating in the courts. The courts seek to provide equal access to justice and full courtroom participation for people from all language backgrounds. In pursuit of these goals, this committee has been created to recommend immediate and long-term improvements in court interpreting and translating practices.

The committee is discussing how interpreters are chosen, what training they need, whether they should be subject to a code of ethics, whether they should be tested before serving in court, and how they should be supervised and financed. The committee is reviewing the work of other states, examine new technology, and collect information on needs and costs. The committee's first report, due in October 2000, will set priorities for action, recommend statute and rule changes, and propose items for the next biennial budget. The committee also has ongoing responsibility for evaluating new interpreter programs, suggesting judicial and staff education programs, and fostering general public and governmental understanding of the issues involved and the changes needed.

The committee is chaired by Judge Elsa Lamelas of the Milwaukee circuit court. Members include municipal, circuit, and appellate judges, district court administrators, county clerks of court, attorneys, interpreters of several languages, state agencies that work with non-English speaking and deaf and hard-of-hearing clients, legislators, and a court commissioner.

Meetings are held monthly in various locations. For more information about the committee, please contact Marcia Vandercook, Office of Court Operations, 110 East Main Street #410, Madison, WI 53703; phone 608-267-7335; TTY 608-261-8286; e-mail Marcia.Vandercook@courts.state.wi.us.

OREGON INTERPRETER STATUTES

45.272 Definitions for ORS 45.272 to 45.297. As used in ORS 45.272 to 45.297:

(1) "Adjudicatory proceeding" means:

(a) Any contested case hearing conducted under ORS 183.310 to 183.550; or

(b) Any hearing conducted by an agency in which the individual legal rights, duties or privileges of specific parties are determined if that determination is subject to judicial review by a circuit court or by the Court of Appeals.

(2) "Agency" has that meaning given in ORS 183.310. [1999 c.1041 s.3]

Note: 45.272 becomes operative July 1, 2001. See section 10, chapter 1041, Oregon Laws 1999.

45.273. (1) It is declared to be the policy of this state to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language because of a non-English speaking cultural background or a disability, and who as a result cannot be fully protected in administrative and court proceedings unless qualified interpreters are available to provide assistance.

(2) It is the intent of the Legislative Assembly in passing ORS 45.272 to 45.297 to provide a procedure for the qualification and use of court interpreters. Nothing in ORS 45.272 to 45.297 abridges the rights or obligations of parties under other laws or court rules.

45.275. (1) The court shall appoint a qualified interpreter in a civil or criminal proceeding, and a hearing officer or the designee of a hearing officer shall appoint a qualified interpreter in an adjudicatory proceeding, whenever it is necessary:

(a) To interpret the proceedings to a non-English speaking party;

(b) To interpret the testimony of a non-English speaking party or witness; or

(c) To assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer.

(2) No fee shall be charged to any person for the appointment of an interpreter to interpret testimony of a non-English speaking party or witness, or to assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer. No fee shall be charged to a non-English speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this section.

(3) A non-English speaking party shall be considered unable to pay for an interpreter for the purposes of this section if:

(a) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter, and provides any other information required by the court or agency concerning the inability to pay for such an interpreter; and

(b) It appears to the court or agency that the party is in fact unable to pay for a qualified interpreter.

(4) Fair compensation for the services of an interpreter appointed under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state shall be from funds available to the court other than the State Court Indigent Defense Account established by ORS 151.465, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(d) By the agency in an adjudicatory proceeding.

(5) Where a party or witness is dissatisfied with the interpreter selected by the court, the hearing officer or the designee of the hearing officer, the party or witness may use any certified interpreter. However, if the substitution of another interpreter will delay the proceeding, good cause must be shown for any substitution other than a substitution made by the judge or hearing officer. Any party may object to use of any interpreter for good cause. Unless the court, hearing officer or the designee of the hearing officer has substituted interpreters for cause, the party using any interpreter other than the interpreter originally appointed by the court, hearing officer or the designee of the hearing officer shall bear any additional costs beyond the amount required to pay the original interpreter.

(6) A court may allow as costs reasonable expenses incurred by a party in employing the services of an interpreter in civil proceedings in the manner provided by ORCP 68.

(7) Any person serving as an interpreter for the court or agency shall state or submit the person's qualifications on the record unless waived or otherwise stipulated to by the parties or counsel for the parties. An interpreter for the court or in an adjudicatory proceeding shall swear or affirm under oath to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(8) For the purposes of this section:

(a) "Non-English speaking person" means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.

(b) "Qualified interpreter" means a person who is readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

45.285. (1) In any civil action, adjudicatory proceeding or criminal proceeding, including a court-ordered deposition if no other person is responsible for providing an interpreter, in which a disabled person is a party or witness, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the disabled person, or to interpret the testimony of the disabled person.

(2) No fee shall be charged to the disabled person for the appointment of an interpreter or use of an assistive communication device under this section. No fee shall be charged to any person for

the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for the purposes of this section.

(3) Fair compensation for the services of an interpreter or the cost of an assistive communication device under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state shall be from funds available to the court other than the State Court Indigent Defense Account established by ORS 151.465, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(d) By the agency in an adjudicatory proceeding.

(4) For the purposes of this section:

(a) "Assistive communication device" means any equipment designed to facilitate communication by a disabled person.

(b) "Disabled person" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

(c) "Qualified interpreter" means a person who is readily able to communicate with the disabled person, interpret the proceedings and accurately repeat and interpret the statements of the disabled person to the court.

45.288. (1) Except as provided by this section, whenever a court is required to appoint an interpreter for any person in a proceeding before the court, or whenever a hearing officer is required to appoint an interpreter in an adjudicatory proceeding, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter. Upon request of a party or witness, the court, hearing officer or designee of the hearing officer, in the discretion of the court, hearing officer or the designee of the hearing officer, may appoint a qualified interpreter to act as an interpreter in lieu of a certified interpreter in any case or adjudicatory proceeding.

(2) The requirements of this section apply to appointments of interpreters for disabled persons, as defined in ORS 45.285, and for non-English speaking persons, as defined in ORS 45.275.

(3) The court, hearing officer or the designee of the hearing officer may not appoint any person under ORS 45.272 to 45.297 if:

(a) The person has a conflict of interest with any of the parties or witnesses in the proceeding;

(b) The person is unable to understand the judge, hearing officer, party or witness, or cannot be understood by the judge, hearing officer, party or witness; or

(c) The person is unable to work cooperatively with the judge of the court, the hearing officer, the person in need of an interpreter or the counsel for that person.

(4) The Supreme Court shall adopt a code of professional responsibility for interpreters. The code is binding on all interpreters who provide interpreter services in the courts or in

adjudicatory proceedings before agencies, and on all persons who supervise or administer the provision of interpreter services in the courts or in adjudicatory proceedings before agencies.

(5) For the purposes of this section, "qualified interpreter" means a person who meets the requirements of ORS 45.285 for a disabled person, or a person who meets the requirements of ORS 45.275 for a non-English speaking person.

45.291 Certification program; establishment by State Court Administrator. (1) Subject to the availability of funding, the State Court Administrator shall establish a program for the certification of court interpreters. The program shall be established by rules adopted pursuant to ORS 1.002 and shall include, but not be limited to, provisions for:

- (a) Prescribing the form and content of applications for certification;
- (b) Prescribing and collecting reasonable fees for the application, examination, certification and renewal of certification for court interpreters;
- (c) Establishing categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for disabled persons, as defined in ORS 45.285, and for interpreters for non-English speaking persons, as defined in ORS 45.275;
- (d) Establishing minimum competency requirements for court interpreters in the various categories of certification;
- (e) Establishing teaching programs designed to educate court interpreters in ethical, substantive and procedural legal issues;
- (f) Prescribing the form of and administering examinations for the purpose of testing court interpreters for competency and ethics; and
- (g) Establishing grounds for renewal, suspension or cancellation of certificates.

(2) An interpreter may be certified in Oregon by the State Court Administrator upon satisfactory proof that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section. [1993 c.687 s.3]

45.292 Certification required for use of title or designation "certified court interpreter" or "court certified interpreter." (1) Except as provided in this section, a person may not assume or use the title or designation "certified court interpreter" or "court certified interpreter," or any other title, designation, words, letters, abbreviation, sign or device tending to indicate that the person is certified for the purposes of providing interpreter services under ORS 45.272 to 45.297.

(2) Subsection (1) of this section does not apply to any person who:

- (a) Is certified under the program established under ORS 45.291;
- (b) Is certified as an interpreter by the federal courts; or
- (c) Is certified as an interpreter in another state that has a certification program that is equivalent to the program established under ORS 45.291. [1999 c.1041 s.8]

45.294 Court Interpreter and Shorthand Reporter Certification Account; sources; uses. (1) The Court Interpreter and Shorthand Reporter Certification Account is established as an account in the General Fund of the State Treasury. All moneys received by the State Court Administrator from fees imposed under ORS 8.445 and 45.291 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the State Court Administrator to carry out the provisions of ORS 8.415 to 8.455 and 45.291.

(2) The State Court Administrator may apply for and receive funds or grants from federal, state and private sources to be credited to the Court Interpreter and Shorthand Reporter Certification Account and used for the purposes specified in ORS 8.415 to 8.455 and 45.291. [1993 c.687 s.4; 1995 c.386 s.7]

45.297 Authority to enter into service contracts. The State Court Administrator may enter into service contracts and may establish uniform policies and procedures, subject to the approval of the Chief Justice of the Supreme Court, governing the appointment, provision and payment of interpreters in proceedings before the circuit courts of the state, including the provision of interpreter services utilizing telecommunications methods. [1993 c.687 s.5]

WASHINGTON INTERPRETER STATUTES

RCW 2.43.010 Legislative intent.

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. Nothing in chapter 358, Laws of 1989 abridges the parties' rights or obligations under other statutes or court rules or other law.

RCW 2.43.020 Definitions.

As used in this chapter:

- (1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.
- (2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.
- (3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before [an] administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.
- (4) "Certified interpreter" means an interpreter who is certified by the office of the administrator for the courts.
- (5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof.

RCW 2.43.030 Appointment of interpreter.

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the office of the administrator for the courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the office of the administrator for the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

RCW 2.43.040 Fees and expenses -- Cost of providing interpreter.

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

RCW 2.43.050 Oath.

Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

RCW 2.43.060 Waiver of right to interpreter.

(1) The right to a qualified interpreter may not be waived except when:

(a) A non-English-speaking person requests a waiver; and

(b) The appointing authority determines on the record that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, at any time during the proceedings.

RCW 2.43.070 Testing, certification of interpreters.

(1) Subject to the availability of funds, the office of the administrator for the courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The office of the administrator for the courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The office of the administrator for the courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The office of the administrator for the courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The office of the administrator for the courts shall compile, maintain, and disseminate a current list of interpreters certified by the office of the administrator for the courts.

(6) The office of the administrator for the courts may charge reasonable fees for testing, training, and certification.

RCW 2.43.080 Code of ethics.

All language interpreters serving in a legal proceeding, whether or not certified or qualified, shall abide by a code of ethics established by supreme court rule.

RCW 2.42.010 Legislative declaration -- Intent.

It is hereby declared to be the policy of this state to secure the constitutional rights of deaf persons and of other persons who, because of impairment of hearing or speech, are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the appointment of such interpreters.

RCW 2.42.050 Oath.

Every qualified interpreter appointed under this chapter in a judicial or administrative proceeding shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or other agency conducting the proceedings, to the best of the interpreter's skill and judgment.

RCW 2.42.110 Definitions.

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Impaired person" means a person who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, speech impaired, or hard of hearing.
- (2) "Qualified **interpreter**" means a visual language **interpreter** who is certified by the state or is certified by the registry of interpreters for the deaf to hold the comprehensive skills certificate or both certificates of interpretation and transliteration, or an **interpreter** who can readily translate statements of speech impaired persons into spoken language.
- (3) "Intermediary **interpreter**" means a hearing impaired **interpreter** who holds a reverse skills certificate by the state or is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of RCW 2.42.130, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified hearing **interpreter**.
- (4) "Appointing authority" means the presiding officer or similar official of any **court**, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision.

RCW 2.42.120 Appointment, pay.

- (1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal **court** proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified **interpreter** to interpret the proceedings.
- (2) If the parent, guardian, or custodian of a juvenile brought before a **court** is hearing impaired, the appointing authority shall appoint and pay for a qualified **interpreter** to interpret the proceedings.
- (3) If a hearing impaired person participates in a program or activity ordered by a **court** as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified **interpreter** to interpret exchange of information during the program or activity.
- (4) If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified **interpreter** throughout the investigation. Whenever a law enforcement agency conducts a criminal investigation involving the interviewing of a minor child whose parent, guardian, or custodian is hearing impaired, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified **interpreter** throughout the investigation. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified **interpreter**.
- (5) If a hearing impaired person is arrested for an alleged violation of a criminal law the arresting officer or the officer's supervisor shall, at the earliest possible time, procure and arrange payment for a qualified **interpreter** for any notification of rights, warning, interrogation, or taking of a

statement. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified **interpreter**.

(6) Where it is the policy and practice of a **court** of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified **interpreter** for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case.

RCW 2.42.130 Source of interpreters, qualifications.

(1) If a qualified interpreter for a hearing impaired person is required, the appointing authority shall request a qualified interpreter and/or an intermediary interpreter through the department of social and health services, office of deaf services, or through any community center for hearing impaired persons which operates an interpreter referral service. The office of deaf services and these community centers shall maintain an up-to-date list or lists of interpreters that are certified by the state and/or by the registry of interpreters for the deaf.

(2) The appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the hearing impaired person, that the interpreter is able in that particular proceeding, program, or activity to interpret accurately all communication to and from the hearing impaired person. If at any time during the proceeding, program, or activity, in the opinion of the hearing impaired person or a qualified observer, the interpreter does not provide accurate, impartial, and effective communication with the hearing impaired person the appointing authority shall appoint another qualified interpreter. No otherwise qualified interpreter who is a relative of any participant in the proceeding may be appointed.

RCW 2.42.140 Intermediary interpreter, when.

If the communication mode or language of the hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the appointing authority who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

RCW 2.42.150 Waiver of right to interpreter.

(1) The right to a qualified interpreter may not be waived except when:

- (a) A hearing impaired person requests a waiver through the use of a qualified interpreter;
- (b) The counsel, if any, of the hearing impaired person consents; and
- (c) The appointing authority determines that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter shall not preclude the hearing impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding, program, or activity.

RCW 2.42.160 Privileged communication.

(1) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law.

(2) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

RCW 2.42.170 Fee.

A qualified and/or intermediary interpreter appointed under this chapter is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

RCW 2.42.180 Visual recording of testimony.

At the request of any party to the proceeding or on the appointing authority's initiative, the appointing authority may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding.

In any judicial proceeding involving a capital offense, the appointing authority shall order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding.

MINNESOTA INTERPRETER STATUTES

546.42. *Persons handicapped in communication; interpreters*

For the purposes of sections 546.42 to 546.44, a person handicapped in communication is one who, because of a hearing, speech or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding, is unable by reason of the deficiency to obtain due process of law.

546.43. *Proceedings where interpreter appointed*

Subdivision 1. In a civil action in which a handicapped person is a litigant or witness, the presiding judicial officer shall appoint a qualified interpreter to serve throughout the proceedings.

Subd. 2. In a proceeding before a board, commission, agency, or licensing authority of the state, or of a political subdivision of the state, where a witness or the principal party in interest is a handicapped person, all of the proceedings that are pertinent shall be interpreted in a language the handicapped person understands by a qualified interpreter appointed by the board, commission, agency, or licensing authority.

546.44. *Qualified interpreter*

Subdivision 1. No person shall be appointed as a qualified interpreter pursuant to sections 546.42 to 546.44 unless that person is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.

Subd. 2. A qualified interpreter appointed pursuant to the provisions of sections 546.42 to 546.44, before entering upon any duties shall take an oath promising, to the best of skill and judgment, to make a true interpretation to the handicapped person being examined of all the proceedings, in a language which the person understands, and that the interpreter will repeat in the English language the statements of the handicapped person to the court or other official before whom the proceeding is taking place.

Subd. 3. The fees and expenses of a qualified interpreter shall be determined by the presiding official and paid by the court, board, commission, agency or licensing authority before whom the proceeding is taking place.

Subd. 4. Disclosure. A person serving as an interpreter pursuant to sections 546.42 to 546.44, shall not, without the consent of the person handicapped in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as the interpreter.

611.30 *Right to interpreter, state policy*

It is hereby declared to be the policy of this state that the constitutional rights of persons handicapped in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings. It is the intent of sections 611.30 to 611.34 to

provide a procedure for the appointment of interpreters to avoid injustice and to assist persons handicapped in communication in their own defense.

611.31 Handicapped person

For the purposes of sections 611.30 to 611.34, "person handicapped in communication" means a person who: (a) because of a hearing, speech or other communication disorder, or (b) because of difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person, or the seizure of the person's property, or is incapable of presenting or assisting in the presentation of a defense.

611.32 Proceedings where interpreter appointed

Subd. 1. **Proceedings and preliminary proceedings involving possible criminal sanctions or confinement.** In any proceeding in which a person handicapped in communication may be subjected to confinement, criminal sanction, or forfeiture of the person's property, and in any proceeding preliminary to that proceeding, including coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the person handicapped in communication and any witness handicapped in communication throughout the proceedings.

Subd. 2. **Proceedings at time of apprehension or arrest.** Following the apprehension or arrest of a person handicapped in communication for an alleged violation of a criminal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention. A law enforcement officer shall, with the assistance of the interpreter, explain to the person handicapped in communication, all charges filed against the person, and all procedures relating to the person's detainment and release. If the property of a person is seized under section 609.531, subdivision 4, the seizing officer, sheriff, or other law enforcement official shall, upon request, make available to the person at the earliest possible time a qualified interpreter to assist the person in understanding the possible consequences of the seizure and the person's right to judicial review. If the seizure is governed by section 609.5314, subdivision 2, a request for an interpreter must be made within 15 days after service of the notice of seizure and forfeiture. For a person who requests an interpreter under this section because of a seizure of property under section 609.5314, the 60 days for filing a demand for a judicial determination of a forfeiture begins when the interpreter is provided. The interpreter shall also assist the person with all other communications, including communications relating to needed medical attention. Prior to interrogating or taking the statement of the person handicapped in communication, the arresting officer, sheriff, or other law enforcement official shall make available to the person a qualified interpreter to assist the person throughout the interrogation or taking of a statement.

611.33 Qualified interpreter

Subd. 1. No person shall be appointed as a qualified interpreter pursuant to sections 611.30 to 611.34 unless said person is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.

Subd. 2. Every qualified interpreter appointed pursuant to the provisions of sections 611.30 to 611.34, before entering upon duties as such, shall take an oath, to make to the best of the interpreter's skill and judgment a true interpretation to the handicapped person being examined of all the proceedings, in a language which said person understands, and to repeat the statements, in the English language, of said person to the court or other officials before whom the proceeding is taking place.

Subd. 3. The fees and expenses of a qualified interpreter shall be fixed and ordered paid by the presiding official before whom the proceeding is taking place out of the general revenue fund of the county in which the proceeding occurs.

Subd. 4. An interpreter pursuant to sections 611.30 to 611.34 shall not, without the consent of the person handicapped in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as an interpreter.

611.34 Applicability to all courts

The provisions of sections 611.30 to 611.34 shall apply to all courts in this state and political subdivisions thereof.

Rules of Civil Procedure

Rule 43.07 Appointment and Compensation of Interpreter

The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as a cost, in the discretion of the court.

Budget Request FY 2001-2003

DRAFT #5: 8/9/00

for court budget committee review

Department/Program: Director of State Courts
Office of Court Operations

Contact Person: Marcia Vandercook

Issue Name: Court Interpreter Improvements

1. Current Program Description:

Interpreter statute applicable to limited situations: The appointment of language interpreters in court is governed by Wis. Stat. §885.37, which sets criteria for court appointment at public expense:

a) Interpreters are required for persons who have a language difficulty because of the inability to speak or understand English, or who have a hearing or speech impairment, sufficient to prevent the person from consulting with an attorney, reasonably understanding the testimony, or reasonably being understood in English.

b) Interpreters are required in three types of cases: criminal, juvenile (chs. 48 & 938), and mental commitments(chs. 51 & 55). In other types of cases, interpreters may be appointed in the discretion of the court. Some courts appoint interpreters in some paternity actions and family cases.

c) Interpreters are appointed for three types of participants: parties, witnesses, and children and parents subject to ch. 48 or 938.

d) Interpreters are appointed at public expense only when the court finds that the party, witness, or parent is indigent. Courts may exercise their discretion to appoint interpreters in cases of borderline indigency.

Interpreter statute not ADA compliant: §885.37 does not distinguish between court appointment of foreign language interpreters and interpreters who provide services for deaf, deaf-blind, hard of hearing, and speech-impaired court users. The state statute does not conform the Americans with Disabilities Act (ADA) with respect to these services, since the ADA requires the court to pay for accommodation for disabled parties and witnesses in all types of cases and regardless of indigency. The ADA also requires interpreters or other accommodations for jurors. See Access, Report of the Wisconsin Supreme Court Interdisciplinary Committee on the Court-Related Needs of the Elderly and People with Disabilities.

Rate of reimbursement: Counties pay the cost of court-ordered interpreter services, but may submit requests to the director's office for reimbursement of services that are provided under the terms of §885.37. The amount reimbursed to the counties comes from §814.67, which states that the fees for circuit court interpreters shall be \$35/half-day. This rate was set in 1987 and does not reflect what counties must actually pay to get an interpreter to work for the court. The actual market rate for Spanish interpreters currently averages \$39.70/hour; sign language interpreters average \$39.80 /hour. Rates can go as high as \$150/hour for specialty languages, but this is rare. (See attached 72-county survey of clerks of circuit court). For municipal courts, the statute says the rate shall be \$10/half day, but in fact municipal courts must pay the market rate and are not provided with any reimbursement.

There is a separate appropriation in the circuit court sum certain budget to reimburse the counties for interpreter services, under §20.625(1)(c). In 1999-2001, the annual appropriation was \$188,800. The director's office reimburses counties up to the amount of this appropriation. Usually the money runs short in the spring and the director's office holds reimbursement requests for several months to pay from the next year's appropriation. The counties are responsible for any amounts paid over the statutory rate, civil cases, and cases where the court appoints an interpreter for a nonindigent party.

The estimated amount spent by the counties on interpreter billings and staff interpreters for 1999 was \$565,248, three times the amount available for reimbursement. These expenditures are for professional interpreters only and do not reflect the use of family members and agency staff as ad hoc interpreters. In Milwaukee County, the court employs a full-time Spanish interpreter at a cost of \$48,000/year, contracts for most of its sign language services through another county agency at a cost of \$32,000/year, and spends an additional \$109,000 on contract interpreter services. Thus, Milwaukee alone spends as much as the entire annual appropriation for the state.

Committee to improve court interpreting: In 1999, the Director appointed a statewide committee to look at ways to improve language interpreting and translating in the courts. The committee is looking at what legal and language training interpreters should have, whether interpreters should be screened or tested before serving in court, whether court interpreters should be subject to a code of ethics, what measures other states have taken to improve court interpreting, what training should be offered to judges and court staff, what new technology is available, and how court interpreter services should be financed.

The committee is scheduled to make its first report to the Director in October 2000, with recommendations that will provide the full framework for this budget request. To fit within the biennial budget cycle, the committee is submitting this request in advance of its full report and recommendations. Although details remain to be worked out, the committee is certain to recommend statutory changes that will significantly expand the use of court interpreters. The committee also will recommend that the supreme court take responsibility for improving the quality of court interpreters by providing training programs, testing and certifying interpreters, and promulgating a code of ethics for interpreters, as a number of other states have done.

This budget proposal includes the money needed to implement expanded coverage of §885.37. It also includes the cost to develop and implement a statewide program for training and testing court interpreters. The committee is confident that there is a strong current need for these improvements and that this project should go forward in this biennial budget cycle rather than wait until 2003-05.

2. Problems with current services:

Rising non-English speaking population: The non-English speaking population of Wisconsin has risen rapidly over the last ten years. In 1990, about 263,000 Wisconsin residents (5.8% of those 5 years and older) said they spoke a language other than English at home. When asked to characterize how well they spoke English, 37% of the Spanish speakers and 62% of the Asian language speakers said they did not speak English “very well”.

Although the numbers of both groups are small (2.3% and 1.5% of the state’s 1998 population respectively), they are a growing segment of the population. The U.S. Census Bureau Population Estimates Program estimates the Hispanic population of the state rose by 43.7% and the Asian-Pacific Islander population rose by 47.1% from 1990 to 1998, while the state’s overall population rose only 5.6% during this period. Speakers of east European and African languages are also arriving in considerable numbers.

The prevalence of deafness is estimated at 1% of the population (48,900 Wisconsin residents in 1990). The prevalence of hard of hearing persons is estimated at 6.6% (322,900 Wisconsin residents in 1990).

Some judges and clerks see the need for more and better court interpreters as a vital issue, while others see no issue at all. This may be because the need for court interpreters is spread unevenly across the state, so that some courts use interpreters on a daily basis and some courts never. Large Spanish-speaking populations are located in Waukesha and Walworth counties; large Hmong populations are located in Brown, Dane, Eau Claire, LaCrosse, Marathon, Milwaukee, Outagamie, and Winnebago; many deaf people live in Kenosha, Racine, and Walworth; Milwaukee is home to people from all over the world. Some regions need interpreters only in the summer, when foreign visitors and migrant farm workers come to the state. In contrast, a number of counties have not hired an interpreter in the memory of the clerk of courts, either because no non-English speaking person has come to court or because the need for an interpreter went unrecognized.

Qualifications of currently available interpreters: Wisconsin courts have too few qualified interpreters and too many unqualified interpreters. Court staff often make many phone calls to find an interpreter in advance or scramble to find one at the last minute. In rural areas, interpreters often travel from a considerable distance. At the same time, many interpreters that the courts find are woefully underqualified for the job, in ways that are not apparent to a person who doesn’t speak the language required.

There is widespread misunderstanding of the difficulty of court interpreting. According to the director of the federal court interpreter certification project, an interpreter must “interpret the original source material without editing, summarizing, deleting, or adding, while conserving the language level, style, tone, and intent of the speaker, [and] render what may be termed the legal equivalence of the source message.” Being bilingual is just a foundational requirement: court interpreting also requires understanding of legal terminology and procedure, knowledge of speaker’s cultural context, understanding of the ethical obligation not to shade or abbreviate testimony, and a set of very specific short-term memory skills that allow the interpreter to listen, understand, memorize, translate, and speak all at the same time. This is a highly specialized skill.

Although courts may screen an interpreter through voir dire, they still have no assurance that the interpreter’s work is complete, accurate, and ethical. Too often, courts use relatives, police officers, or social workers from neighboring agencies with insufficient inquiry into their training or their conflicts. Even professional interpreters who perform well in community settings may be underqualified for the rigors of legal interpreting. (See, e.g., State v. Hindsley, 99-1374CR (Wis. Ct. App., May 11, 2000)).

Underuse of interpreters: There is also misunderstanding of how language affects court proceedings. Many court staff assess a person’s language abilities by asking simple yes-no questions, or by asking if the person uses English at work or in social settings. Basic conversational skills are not enough to intelligently waive the right to counsel, understand the implications of a guilty plea, or undergo cross-examination. In addition, the person may come from a country that has no such thing as “rights”, or may speak a language where answering a question “yes” means only “yes, I acknowledge your question”. Without a trained interpreter to convey the legal concepts at issue, there is potential for serious substantive misunderstanding.

Consequences of the current system: There are several consequences of using underqualified interpreters or failing to use interpreters where needed.

- First and foremost is the denial of access to court proceedings for litigants of limited English proficiency. The implications of this denial are clear and have been described in Wisconsin appellate case law for criminal cases. These considerations are equally applicable in civil cases such as divorce and property division, child custody and support, debt collection, and traffic cases leading to loss of a driver’s license. These shortcomings prevent non-English speaking persons from using courts to resolve their disputes and discourage victims from coming to court.
- It is often very inefficient to work through a nonprofessional interpreter, who may interpret slowly or incompletely, need things repeated, or allow misunderstandings to continue until the line of questioning needs to be started over. Often misunderstandings are never recognized or resolved.
- There is a serious loss of accountability when courts use underqualified interpreters or no interpreters at all: communication is poor, testimony is omitted or summarized, the record is incomplete, ethical issues go unnoticed, and unnecessary appeals and dismissals may follow.

What would serve the courts best is a pool of trained professional interpreters who are generally available for the major languages needed. Unfortunately, the growth of court interpreting as a profession has been slow because the pattern of court interpreter use is sporadic and the rate of payment is inadequate or uneven. Some courts pay interpreters a reasonably high market rate but are unable to guarantee steady employment. These counties bear a considerable fiscal burden to make up the difference between the statutory rate of reimbursement and the market rate that interpreters actually charge. In other areas, interpreter use is infrequent and there is little economic incentive for interpreters to make themselves available to the courts or to improve their legal skills. The courts need a plan to increase the level of professionalism among court interpreters and give them an incentive to attend training, work toward certification, and adhere to a code of ethics. It is unreasonable to think that a well-trained interpreter of the quality needed by the courts will work for \$70/day, the current statutory rate.

Why is this the supreme court's responsibility?

Across the country, state supreme courts and administrative directors are grappling with the need to improve interpreter services. Some are responding to recommendations made by task forces addressing race and ethnic bias and disability access; others are responding to the increased demand in day-to-day court operations. Twenty-one states have joined the NCSC consortium, while several of the larger states have independently developed programs. The administrative office of the federal courts has had a centralized system of testing, supervision, and payment since 1978.

Federal law has made clear that persons with disabilities are entitled to equal access to government programs and facilities, in order to enjoy the full benefits and responsibilities of civic life. In particular, deaf and hard of hearing persons are to be provided with the accommodations needed to communicate fully in the courtroom. The committee believes that the logic behind this right to access is equally applicable to non-English speaking parties and witnesses, in civil and criminal cases. The right to full participation in court proceedings should not depend on the country where one was born.

Demand continues to increase for every state, but the quantity and quality of court interpreters has not automatically risen with it. In states without interpreter programs, courts continue to use interpreters of undemonstrated skills and professional standards. Quality does not improve by itself; some authority needs to recognize the issue and take on the responsibility to oversee how interpreters are trained and evaluated. The committee believes that the state supreme court, through its superintending and administrative authority, is charged with providing access to justice and assuring accountability for courts statewide.

This problem is not unique to courts: the medical profession is also addressing the need to have interpreters on call who are skilled in the dynamics of doctor-patient communication and who understand medical terminology and procedure. For example, a group of Dane County hospitals and health agencies have hired a full-time coordinator to develop an interpreter screening, training, and scheduling program. The program offers a test involving interpretation of a medical

interview, translation of written discharge instructions, and an oral ethical question. All interpreters must take and pass this test within six months of beginning work at these hospitals.

3. Objectives and description of proposed project

A. Statutory changes

Expanding the cases covered: The committee will recommend four changes to §885.37:

- bring the statute into compliance with the ADA, which means that sign language interpreters, oral interpreters, and other accommodations will be provided in all types of cases, for indigent and nonindigent court users, and for jurors. Although the ADA requires these services now, the contrary language of the state statute causes frequent misunderstanding about their necessity under the law.

- expand the statute to require the use of foreign language interpreters in all cases, including civil and family. Civil cases impact significant economic and family interests and deserve the same level of accessibility and accuracy. Family cases can be complex, requiring parties to negotiate property settlements and shared custody arrangements, and comply with child support and domestic violence restraining orders. Many civil cases have criminal implications if a party fails to understand and comply with a court order. Many parties to these cases appear pro se; if they also appear without an interpreter, the misunderstandings and frustrations can be exponential.

- expand the statute to require that foreign language interpreters be appointed regardless of indigency. Interpreters are as crucial to the integrity of court proceedings as court reporters, and are necessary to assure that what happens in court in English is what also happens in another language. When parties are forced to provide their own interpreters, they most often bring their children, other relatives, or community leaders and advocates. It is unlikely that these assistants have adequate English skills or understanding of legal proceedings, while their potential for conflicts of interest is high. The standards for indigency are set very low; many parties who are not technically indigent are still unable to afford the services of an interpreters in addition to all other costs. If parties are required to pay for a neutral professional interpreter, it becomes a cost that applies only to non-English speaking persons. Even in those cases where a party can afford to hire a professional interpreter, the financial relationship between interpreter and client undermines the neutrality needed by the court. It is highly preferable to have the interpreter be hired to serve the court, perhaps with a recoupment clause that allows the court to assess foreign language interpretation as a cost against a nonindigent litigant.

- require courts to use an interpreter certified by the proposed court interpreting program whenever one is available in the language needed. This assures that the interpreter will have the language skills, legal knowledge, and understanding of the code of ethics necessary to provide adequate services to the court and to the non-English speaking person. The committee will recommend court rules detailing how courts should screen other interpreter candidates when a certified interpreter is not reasonably available.

Shift costs to state: This request proposes that the major cost of interpreter services be shifted from the counties to the state. Following the model recommended by the National Center for State Courts, other states have moved from planning and paying for interpreter services at the county level to statewide programs and budgets. Minnesota is making this transition now, and at least seven other states have already done so. They shift to state funding for several reasons: to meet the supreme court's statewide responsibility to provide equal access to the courts, to equalize costs and services across the state, to remove any economic disincentive to use interpreters when needed, and to avoid the sense that interpreter use is just another unfunded state mandate imposed by a central court system that doesn't understand local problems.

The committee recommends that this state take primary responsibility for the cost of interpreter services, either by increasing the rate of reimbursement and the available appropriation to a realistic level, or by including them as part of the court's sum sufficient budget.

Appropriation increase: The current reimbursement model can be retained if the rate reimbursed to the counties is increased and if reimbursement is provided in all cases. The interpreter reimbursement line item in the circuit court sum certain budget, under §20.625(1)(c), should be increased to a level that provides full reimbursement to the counties. This appropriation is currently set at \$188,800 yearly, which covers only a third of the current actual costs. If civil cases and nonindigent parties are covered, and if judicial education programs are effective, these costs may increase as much as threefold over time. It is counterproductive to expand the coverage of the interpreter statute or improve judicial awareness without increasing the available state funding.

To minimize the paperwork associated with three times as many reimbursement requests, the court office of management services will need to design procedures and request statutory authority to require that reimbursement requests be submitted within certain time limits after the interpreter serves in court, and to send reimbursement checks on a quarterly basis rather than as submitted.

Pay rate for interpreters: If the current reimbursement structure is retained, the rate of reimbursement under §814.67 should be increased to a rate that will properly compensate qualified interpreters. The current statutory rate does not come close to the rate that the counties must pay to find interpreters. The committee has tentatively recommended that the statutory hourly rate be set at \$40 per hour for certified interpreters and \$30 per hour for noncertified interpreters. Certified interpreters should be paid more than noncertified interpreters to provide an incentive to attend trainings and take the exam. The committee recommends that the hourly rate be subject to an automatic cost of living increase, to keep the rate close to the actual market rate for well-qualified interpreters. By setting a cap on fees, the statute will continue to encourage negotiation of interpreter fees and cost control at the county level.

Make interpreter costs part of the sum sufficient budget: In the alternative, including interpreter costs in the court's sum sufficient budget is consistent with the committee's view of the proper role of the court interpreter. The committee believes that interpreters should be an integral part of the court team, necessary to assure the fairness, accuracy, and efficiency of the proceedings.

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Accordingly, interpreter costs can properly be included in the circuit court sum sufficient budget as a necessary cost of providing basic court services. Interpreter rates can then be negotiated through the district court administrators, as is done with free-lance court reporters, and the state can exercise greater control over the allowable rate to be billed. A move to state funding could also provide the necessary economy of scale to make staff interpreters cost-effective within a judicial district, although most interpreter services will continue to be provided by freelance interpreters. Accounting costs would shift to the director's office, but scheduling would still be done by clerks of court and judicial assistants.

Costs offset: Although overall costs of providing interpreter services will increase under this proposal, there will be some offsets: easier scheduling, less delay, more efficiency in court, better records, and fewer appeals. Clerks of court currently spend many hours scheduling interpreters. Courts that currently pay a minimum of one or two hours for 15 minutes of work can put the rest of the time to work on civil and nonindigent cases. Milwaukee uses its staff interpreter for paternity and pro se cases when not needed in the criminal division.

Municipal courts: The committee has discussed the needs of municipal courts but has not had time to develop a proposal to meet their needs. The municipal courts are experiencing the same increased need for interpreter services as the circuit courts, only without a source of even partial reimbursement. Increased demand for qualified interpreters at the state level will only increase costs for municipal courts competing for the same interpreters. On the positive side, state interpreter training efforts will improve the pool of interpreters available to the municipal courts.

B. Training and testing program

The committee proposes a two-year interpreter project to improve the quality of the court interpreters available. This program has four components:

- interpreter training programs covering court terminology and procedure, ethics, and interpreting skills
- testing to determine skill levels so judges can make appointments based on reliable information
- developing a statewide interpreter roster of interpreter agencies and individual interpreter names, phone numbers, languages, and qualifications, to assist courts in locating and appointing interpreters
- education for judges, court staff, and attorneys on best practices for appointing and using interpreters in court and communicating with speakers of limited English proficiency

This project follows a model developed by the National Center for State Courts and successfully implemented in other states. NCSC provides the staff for the Consortium of State Court Interpreters, a group of 21 states who develop and share the course materials and tests necessary to implement this model. Wisconsin joined the consortium in 1998 and has already received a wealth of materials and assistance.

One project position is requested to develop the interpreter program. The first years of the interpreter program will be staff-intensive, writing curriculum, establishing a testing process, finding faculty, compiling mailing lists and rosters, and other start-up tasks. There will be administrative and travel costs associated with the training and testing program. The project also includes ongoing education programs for judges, court staff, and attorneys, along with written training materials. If the program is successful, a permanent position may be sought later.

At least eight other states have a position in the director's office dedicated primarily to court interpreter issues. At least three other states have "access coordinators", who work on interpreter programs along with race and disability issues. In addition, many metropolitan courts have developed interpreter programs just for the individual city or county. In Wisconsin, Milwaukee County has received a one-year grant from the state Office of Justice Assistance to begin working on interpreter issues on behalf of the circuit court. The Milwaukee interpreter coordinator will evaluate current procedures, develop recommendations on a certification program; develop procedures for providing services to litigants with speech and hearing impairments, work with judicial officers on interpreter issues, and perform research and analysis. This individual will work closely with the director's committee to coordinate efforts. (Attached are job descriptions for the Milwaukee and Oregon positions.)

Orientation workshops: The model used in many states recommends a two-day orientation to court interpreting. The curriculum focuses on ethical conduct, legal terminology and court procedure, and basic legal interpreting skills. It is designed to give interpreters a good introduction to court work, allow some practice time, and help the trainees decide if they are ready to pursue the certification test. Course outlines and materials are available without cost through the consortium.

The first workshop would be developed using a "training the trainers" model recommended by the Minnesota court interpreter program. Highly skilled interpreter trainers would be hired from outside the state to train a limited number of Wisconsin court interpreters, those with the best interpreting skills and the best potential for becoming trainers themselves. The outside trainers help develop the skills of the Wisconsin trainers, then guide the administration of the first orientation workshop and critique the performance of the Wisconsin trainers. In exchange for this training, the Wisconsin trainers agree to serve as trainers for future workshops, the first few without pay. This enables Wisconsin to give the workshops at much lower cost in the future and creates a core constituency of skilled interpreters who understand and support the court program.

Written comprehension test: Immediately after the end of the orientation workshop, a written test will be offered covering ethics, legal terminology and procedure, and general English usage. This test is currently being developed by NCSC and tested by the Oregon state courts. Interpreters who pass this test will be noted on the statewide roster, providing at least a minimum assurance of their English comprehension, understanding of court terminology, and knowledge of the code of ethics under which they agree to operate. This test should not be confused with the certification test, which tests knowledge of English and the target language, ability to interpret accurately and completely between the two languages, and ability to convey legal concepts.

After the first orientation held at some central location, the workshop and written comprehension test will be offered three times a year at different locations. By the end of the biennium, a basic level of training and screening could be provided in (for example) Milwaukee, Madison, LaCrosse, Eau Claire, Kenosha, Green Bay, and Wausau, and available to all interpreters within a reasonable distance of those cities.

Certification test: Once interpreters have taken the orientation workshop and passed the written comprehension test, some will have the opportunity to demonstrate actual interpreting skills. The consortium foreign language certification exams test an interpreter's skills in English and in the foreign language. Interpreters are tested in three modes: consecutive interpretation (question and answer), simultaneous (continuous, while proceedings are ongoing), and sight (oral interpretation of a written document). Tests are graded using scoring units such as numbers and names, idioms, legal terms, changes in tone and formality, and descriptions. The tests are administered via audiotape by in-state proctors, then sent to an experienced team of raters to be graded off-site. The passing grade is set at 70%. Certification will be noted on the state roster so courts will know that these are the most highly qualified interpreters available and should be called first.

At least to begin with, Wisconsin will offer the certification test only in Spanish and Hmong, the foreign languages most used in our courts. The committee does not recommend that the court develop its own certification test for American Sign Language and other forms of communication with deaf and hard of hearing individuals. Certification of sign language interpreters is already handled by a well-respected national organization, the Registry of Interpreters for the Deaf (RID), which offers several basic certificates and a specialized legal certificate. (The National Association of the Deaf also offers a basic test in some states, although it does not have a legal certification.) Sign language interpreters will be listed on the statewide roster with their RID or NAD certifications noted.

Other states have found that they can certify a sizeable number of practicing Spanish interpreters with the first test, and then another group after some additional training. Asian languages often prove more difficult for many reasons, resulting in frustration with the test and the courts. For that reason, this budget also proposes that the court provide advanced training in Spanish and Hmong, to make sure there is a reasonable pass rate and a larger pool of certified interpreters available to the courts.

Offsetting administrative costs through fees: Most states charge workshop and testing fees to interpreters to offset the costs of the programs. Under current statutes, if the Wisconsin courts charge such fees, the fees must be returned to general revenues and will not provide a direct offset of the costs. The Minnesota court interpreter program sought and received statutory authority to charge and keep fees for its training and testing programs. It still keeps its fees relatively low to attract would-be interpreters, often recent immigrants, who could not afford more expensive programs. The Minnesota program now takes in \$25,000 in fees to supplement its \$100,000 annual program budget. The committee recommends that a similar statutory change be sought for the Wisconsin program.

4. Resources needed and timeline:

A. Statutory changes

Under this proposal, the demand for qualified interpreters is expected to increase gradually over the biennium, for three reasons: judicial and attorney training will raise awareness and demand; statutory changes will increase the cases where interpreters are appointed; and the state's foreign-language population will go on increasing even if the court and the legislature do nothing at all.

It is difficult to quantify the cost of the committee's proposal. The committee does not have a reliable estimate for how often interpreters are currently appointed by the court, how often family members and agency staff are used, how often parties go without any interpreter when they really should have one, or how these practices vary from county to county. The committee has undertaken two surveys that should add a great deal of information, but there will not be a definitive answer to most of these questions.

The committee also cannot predict with much accuracy how many cases will be added by a change to the statutes. The committee has found it difficult to estimate how many civil litigants do not speak English and how many are indigent. It is difficult to predict how much the demand for interpreters will increase with judicial education and a bigger pool of trained interpreters.

Attached is a comparative chart for the non-English speaking populations and costs of court interpreter programs in Wisconsin, Colorado, Minnesota, Oregon, Utah, and Washington. While each of these states has undergone major changes in its approach to court interpreting over the last ten years, each state is different in enough respects that it is hard to draw a clear parallel for costs. This information is useful mainly to gauge if the committee's estimates are in rough proportion to the non-English speaking population and costs of the comparison states.

There are two sources of information with some predictive value. In Oregon, the administrative office of the courts began a serious interpreter program in 1995, training and testing interpreters and training judges to hire certified interpreters. Over the last 5 years, in-court interpreter costs have increased from \$495,000 to \$1.2 million. Oregon made no changes to its statutes increasing the cases for which interpreters are required (criminal and civil, indigent and disabled parties only). In Utah, the administrative office of the courts in 1997 began to offer a certification test in Spanish and established a pay scale for certified, qualified, and uncertified interpreters. In 1998, it broadened its statute to cover nonindigent as well as indigent criminal defendants, juveniles, and parties to domestic violence restraining orders. Interpreting costs rose from \$216,900 in 1995 to \$308,300 in 1997 to \$422,300 in 1999.

For purposes of preliminary internal court budget discussions, the working number of \$1.4 million is suggested for this biennium, based on the following assumptions:

- Under the current statute, adding interpreter costs to the sum sufficient budget or fully reimbursing counties would cost \$376,400 in addition to the current \$188,800. This would

cover the \$565,248 now being spent by the counties for freelance billings and staff interpreters. Current billings appear to reflect current market rates.

- Expanding to cover all case types would approximately double the number of cases covered once the statutory change becomes effective. There were 173,780 filings in 1999 in the categories currently covered by the statute, primarily criminal and juvenile cases, which have a high percentage of non-English speakers. The cases proposed to be included are mostly civil, family, paternity, small claims, probate, and traffic. Family, paternity, and small claims cases have a high percentage of pro se litigants and a higher than average percentage of non-English speakers. On the whole, however, these cases should need interpreters at a lower rate than criminal cases. There were 133,167 of these cases filed in 1999. Noncriminal traffic cases are similar to criminal cases, with a high percentage of non-English speakers, and should need interpreters at a similar rate. There were 72,844 contested traffic cases filed in 1999. Doubling the number of cases covered should approximately double the costs.

- Expanding the statute to cover nonindigent parties is expected to have only an incremental effect. A high percentage of recent immigrants are indigent and already qualify for court-appointed interpreters. For criminal cases, the increase should not be great, since most criminal defendants are indigent or are sufficiently poor that the court already exercises its discretion appoint an interpreter. For civil cases, many parties in family, paternity, small claims, and domestic abuse TROs are indigent, while the rate of indigence is much lower in civil, probate, and adoption cases. The committee will discuss whether there should be a provision allowing foreign language interpreter services to be assessed as costs to nonindigent parties. (This type of recoupment provision is not allowed under the ADA.)

- Achieving ADA compliance should not be a major additional expense, since most judges and clerks of court understand the federal requirements and are complying already. A few will need to change their current practices. Since these changes are already required by federal law, the increased costs will have to be absorbed in any case.

- Increased awareness of the issues involved will have significant impact on the rate at which courts hire professional interpreters. Courts are currently using family members and friends who have no training, uncertain skills, and likely conflicts of interest. Courts also rely on bilingual police officers, social workers, and lawyers operating under the same drawbacks. Judicial education on best interpreting practices should result in many more appointments of professional interpreters and decrease the use of free services. The committee estimates that better judicial awareness will approximately double the current use of professional interpreters. These effects will be felt over several years, so the budget below adds 50% per year for this biennium and projects a 100% increase for future biennia.

Current annual cost paid by counties for freelance interpreters (criminal, mental, juvenile; indigent primarily)	\$485,528
Milwaukee Spanish staff interpreter	\$ 48,000
Milwaukee sign language services through county	\$ <u>32,000</u>
Total billings	\$565,528
 Current annual amount of state reimbursement	 \$ <u>188,800</u>

\$10,620*	<u>Faculty development (training the trainers)</u> \$6,530 consultant fees (\$500/day) and travel \$4,090 trainee materials and program expenses, travel	November 2001
	<p>Out of state experts with a strong background in interpreter training and faculty development will train a selected group of Wisconsin interpreters, judges, and court staff to act as interpreter trainers, judicial education faculty, and public speakers. Offered without cost to the trainees on the understanding that trainees will provide trainings and speaking to others for the first year.</p> <p>*training the trainers is a one-time cost</p>	
\$7,730	<u>First orientation workshop</u> consulting fees and travel included above \$1,760 travel expenses for 8 Wisconsin trainers \$2,800 advertising, materials, mailings, room rental \$1,920 interpreters for deaf interpreters \$1,250 grading the written comprehension test	November 2001
	<p>Two-day orientation workshop for court interpreters. Registration limited to 50 participants with preference for a range of languages. Includes a screening test at the end. Attendance at the workshop and screening test results would be indicated on the interpreter roster. Same consultants will guide the administration of the first workshop and critique the Wisconsin faculty. Written comprehension and ethics test will be offered immediately following the workshop. Oregon estimates it will cost \$50/test to grade the comprehension tests.</p>	
\$13,170	<u>Three orientation workshops</u> \$1,000 Wisconsin faculty travel \$2,000 mailings, room, advertising, administration \$...750 test grading \$3,750 per workshop plus \$1,920 interpreters for deaf interpreters for one workshop	February 2002
	<p>Two-day orientation workshop in three locations. Delivered by Wisconsin faculty trained at first workshop. Includes the written comprehension test. DCAs will be invited also.</p>	
\$11,250	<u>Three orientation workshops</u> Three sessions at \$3,750 each: faculty, administrative and travel	May 2002
	<p>Two-day orientation workshop in three locations. Delivered by Wisconsin faculty trained at first workshop. Includes the written comprehension test.</p>	
\$10,870	<u>Certification Exam: Spanish</u> \$4,150* NCSC consultants to train proctors and oversee first exam	September 2002

\$1,320 travel & per diem for in-state proctors
\$4,900 test rating (out-of-state raters supervised by NCSC, 30 tests)
\$ 500 notify applicants, conduct criminal background check

Spanish interpreters are the interpreters most used by the courts and the largest pool ready to take the test. Test will be administered via CD and audiotape by in-state proctors, then sent to trained raters in another state. A consultant will be hired to train the proctors and oversee the first exam. Costs per exam are negotiated with the state convening the rating panel. Exam will be given in three locations. The Hmong test is also under consideration for this time, for an additional \$5,230.

*training the proctors is a one-time cost

\$12,120 Advanced language-specific training January 2003
\$7,600 faculty consultants and travel
\$1,720 Wisconsin faculty travel
\$2,800 room, mailings, administration

Program to help interpreters reach the skill level needed to pass certification level exams. Sessions in Spanish and Hmong. Faculty consultants expert in both interpreting skills and each language are necessary. Will be offered in two locations, back-to-back, to save consultant travel.

\$12,120 Certification exam: Spanish and Hmong May 2003
\$1,320 proctor travel & per diem
\$4,900 Spanish raters panel, 30 exams
\$4,900 Hmong rater panel, 20 exams
\$1,000 notify applicants, conduct criminal background check

The second round offers a different version of the Spanish for interpreters who came close but didn't pass the first time. The Hmong test is offered on the second round to allow interpreters to take the advanced language-specific training or pursue independent training before attempting the test. After this test is given, Wisconsin should have a reasonable number of certified Spanish interpreters and a couple of certified Hmong interpreters.

\$2,000 Republish court interpreters handbook

\$ _____ Judicial education costs?

Cost of position: \$138,340 for two years
Cost of training and testing, publications: \$79,880 for two years
Total cost: \$218,220 for 2001-2003

5. Long term costs after 2003

If the statutory changes are fully implemented, it will take a couple of years to see how accurate the projected costs turn out to be. The committee will recommend education programs for judicial officers, clerks of court, and attorneys; increased awareness of the law and the importance of qualified interpreters will cause an increase in demand. After the first few years, projected costs can reasonably be estimated from state projections of population growth among various ethnic groups. As noted earlier, the Hispanic and Asian-Pacific Islander populations have increased approximately 50% over the last ten years.

After the first pool of existing interpreters has been trained and tested, staff time and administrative costs may decrease, but all of the project's functions are intended to be ongoing. In two years, there should be enough information to know whether the functions can be absorbed by existing staff in the Office of Court Operations or whether there is sufficient work to justify an ongoing full-time or part-time position. Other states have found that there continues to be more than enough work for an interpreter coordinator, as judges realize the benefits of using well-qualified interpreters, the demand for services increases, and new people need to be trained and tested. The demand can also be expected to increase because of the statutory changes expanding the types of cases for which interpreters should be ordered, promoting higher pay for more qualified interpreters, and changing the way interpreters are paid.

6. Alternatives that have been considered

The alternatives considered by the committee will be more fully discussed in its October report.

Implement parts of the program: The committee's proposal follows a well-integrated, well-tested approach recommended by the National Center for State Courts and successfully implemented in a number of similar states. While it might be tempting from a budgetary point of view to implement only part of the proposal, the committee in its discussions has found that the various pieces of the proposal are deeply intertwined with each other.

- If the training and testing program is adopted without expanding the coverage of the statute and increasing the funding, there is little incentive for interpreters to participate. There will be insufficient demand for services and no assurance that interpreters who pass the certification exam will be paid more or hired more often.
- If the coverage of the statute is expanded without training and testing, or if judicial education alone is increased, the demand for more interpreters will far exceed the supply. Courts will be unable to comply with the statutes and will still have no way to assess the quality of the interpreters that they use.
- If the coverage of the statute is expanded without added funding, the committee anticipates that counties will be strongly opposed to the change. Judges and clerks of court will find themselves caught between the need for fiscal responsibility at the county level and the need to comply with what the state law requires.
- If the project staff position is not funded, there will be inadequate resources to develop the training and testing program, to maintain the roster of certified interpreters,

and to offer training for judges, clerks, and attorneys. Either the program will fail, or it will go forward only by siphoning resources away from other programs.

- If only parts of the training program are funded, the pass rate of the test will be lower, stirring criticism of the test, decreasing the supply of certified interpreters, and provoking frustration on the part of judges, clerks, and interpreters. There is no assurance that private sector and university training will be able to take up the slack.

Eliminate county reimbursement system and bill directly to state: Some states have shifted to pure state oversight and state funding. While the committee recommends that the supreme court take responsibility for development and oversight of a statewide interpreter program, the committee has reservations about shifting to full state funding outside the sum sufficient budget. Historically, the appropriation and statutory reimbursement rate have not kept up with the market rate. If this continues to be true, county funding will still be needed to cover changes in market conditions. Accounting costs would shift to the director's office and would require additional state staff.

Hire staff interpreters: Milwaukee County currently employs a full-time staff Spanish interpreter who handles criminal cases, as well as some paternity and civil pro se cases. Milwaukee County contracts with two other Spanish interpreters on a regular basis. There is also documented need for Spanish interpreters in much of southeast Wisconsin, in Kenosha, Racine, Walworth, and Waukesha counties. While it might be cost-effective to create several full-time court interpreter positions to serve Milwaukee and southeast Wisconsin, the scheduling problems could prove very difficult. Dane County also spends considerable money on Spanish interpreters, perhaps enough for a half-time employee. For other languages and other parts of the state, the volume of work doesn't appear to be sufficient to make staff interpreters cost-effective. It is possible that staff interpreters in southeast Wisconsin could serve as telephone interpreters for short hearings in the rest of the state. The committee will continue to examine this issue.

Interpreter training provided by other groups: The court could rely on universities, community colleges, nonprofits, or professional interpreter groups to provide basic and advanced interpreter training.

There are significant differences in the programs currently available for sign language interpreters and foreign language interpreters. The Wisconsin chapter of RID runs a legal institute to help sign language interpreters prepare for the legal certification exam. The introductory course runs four days, followed by sixteen additional days on specific topics. The sign language legal certification exam is administered by RID. The NCSC consortium is studying the RID exam and is likely to recommend that state courts accept RID legal certification as the equivalent of consortium certification. For that reason, the state need not necessarily offer court training for sign language interpreters.

For foreign language interpreters, legal training is more embryonic. The International Institute of Wisconsin (located in Milwaukee) is beginning a training program for interpreters in legal, medical, and mental health settings. The University Outreach Center for Community Development in Milwaukee is developing a training program for Hmong interpreters in domestic

violence cases, and there is some interest among other groups. The committee has considered whether the court might contract with one of these entities to develop and provide this type of training. After discussion, it has concluded that this approach would limit the influence the court would have over the content, standards, frequency, and continuity of training opportunities.

No statewide testing: In some states, individual counties or districts set their own standards for court interpreters. In Illinois, for instance, Cook County has developed its own certification program based on the consortium model. In Florida, the judicial districts set their own standards, while the director's office provides technical assistance and advisory testing. In Wisconsin, Milwaukee County has convened a local committee to talk about many of these same issues and has obtained one-year funding from the Office of Justice Assistance to fund an interpreter coordinator position. However, this approach creates a patchwork of rules and policies, inequitable funding, loss of the economies of scale, and decreased cooperation among counties. Adult education and test development are complex fields and require a professional approach. The validity and authority of the programs will be greatly enhanced if adopted by the supreme court and implemented statewide.

Permanent rather than project position: Based on the experience of other states, the court could certainly justify a request for a permanent position rather than a project position. Other states have found that a well-run interpreter program requires staff, and that the need for training, testing, and maintaining an interpreter roster is an ongoing process. The committee has requested a project position in order to demonstrate the worth of the program, but would certainly find a permanent position acceptable if it is politically feasible.

Telephone interpreting: Telephone interpreting services are currently used by some Wisconsin courts through a commercial firm called Language Line (formerly AT&T Language Line). The court calls the service and asks for an interpreter of a certain language; the service searches first for an interpreter with legal certification, and an interpreter is usually on the line within a few minutes. This service is cost-effective and appears to work well for many short hearings. The committee will make recommendations on this issue in its October report. The current use of telephone interpreting services is fairly low and is likely absorbed into the overall interpreting or telephone budget.

7. The Consequences of Not Funding

Language is the most basic tool of the courts. For someone who speaks or hears no English, the language barrier can be as significant a barrier to court access as a lock on the courthouse door. For immigrants to be incorporated into the rights and responsibilities of community life, they must have access to the means the community uses for handling business, resolving disputes, dealing with crime, and attending to family matters. The same is true for persons with disabilities, as Congress has already concluded. Access to the courts will enhance the integration of these persons into civic life and will strengthen the fabric of the community as a whole.

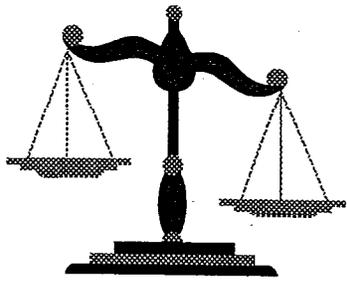
The court should take advantage of the momentum being generated by this committee to address this problem in a systematic way. The committee recommends that the Wisconsin courts follow

the recommendations developed by the National Center for State Courts and successfully implemented in a number of states with similar populations and language needs.

Attachments:

72-county survey, Milwaukee & Oregon job descriptions, 6-state budget comparison, contested case filings chart, budget detail sheet

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CHAPTER 10

Model Court Interpreter Act

Background

The Model Court Interpreter Act is based on a review and synthesis of federal law and statutes in states where comprehensive study and reform of practices and laws relating to the use of interpreters has occurred. The Act and its accompanying commentary are also based on analysis of legal and professional issues that have emerged in recent years through practical experience and research in the states. The document was prepared in cooperation with an advisory group of individuals who have special expertise in court interpretation. The advisory group included the judges, court administrators, and state and federally certified professional interpreters who are named in the acknowledgments for this publication.¹

A Note on the Purposes of the Act and How it May be Used

The following Model Court Interpreter Act and commentary is provided as a guide to assist policy makers who are engaged in any of the following tasks:

- Writing or updating court interpreter statutes;
- Preparing statewide rules of court for the administration of interpreter services;
- Preparing local rules of court or administrative policy to govern interpreter services in the absence of comprehensive state policy in the form of law, rule or administrative procedures.

It is recognized by the drafters of this Model Act that many states will be without the necessary financial, expert, and administrative resources to summarily adopt legislation substantially similar to it in all respects. Implementing a statewide interpreter program involves designating languages for which certification programs will be established, establishing standards and procedures for testing and certifying language interpreters, adopting programs for interpreter recruiting, training, continuing education, and interpreter evaluation. A statewide program must also provide for allocating the cost of interpreter services between government and private individuals and establish mechanisms to provide revenue for the development of the interpreter programs and services.

It is desirable and within the capacity of most states, however, to plan and enact a legislative agenda that sets policy goals consistent with the Model Act and establishes procedures and timetable for implementing them.

Model Court Interpreter Act

§ 1. POLICY DECLARATION

It is hereby declared to be the policy of this state to secure the rights, constitutional and otherwise, of persons who, because of a non-English speaking cultural background, are unable to understand or communicate adequately in the English language when they appear in courts or are involved in justice system proceedings.

It is the intent of this Act to provide for the certification, appointment, and use of interpreters to secure the state and federal constitutional rights of non-English speaking persons in all legal and administrative proceedings.²

Commentary:

A statutory preamble, introduction, or policy declaration should articulate with precision the purpose of the Act and the policy which the Act is designed to implement and support.

§2. DEFINITIONS

For the purpose of this Act, the following words have the following meaning:

A. "^{proceeding}Appointing authority" means a ^{trial} judge, — Court Commission administrative hearing officer or other officer authorized by law to conduct ^{the} judicial or quasi-judicial ^{or administrative} proceedings.

B. "Non-English speaking person" means any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.

Contested case

C. "Legal proceeding" means a civil, ^{or} criminal,³ domestic relations, juvenile, traffic or an administrative proceeding (in which a non-English speaking person is a principal party in interest or a witness.)

D. "Certified interpreter" means a person who: (1) is readily able to interpret⁴ simultaneously and consecutively and to sight translate from English to the language of the non-English speaking person or from the language of that person into English; (2) is certified according to procedures approved by the Supreme Court; and (3) satisfies the standards prescribed and promulgated pursuant to this Act and the Code of Professional Responsibility for Interpreters established in this state.⁵

E. "Principal party in interest" means a person involved in a legal proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.⁶

F. "Witness" means anyone who testifies in any legal proceeding.

Commentary:

The Act should define with precision the terms used in the policy declaration and throughout the Act. These definitions should identify those individuals for whom an interpreter is required, state clearly the proceedings in which

an interpreter should be used, and establish what is meant by a certified interpreter.

Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals possess, including language instructors. The knowledge and skills of a court interpreter differ substantially from or exceed those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting. Interpreters who routinely work non-court settings often cannot perform adequately as a court interpreter.

The term "certified interpreter" is broadly defined to allow flexibility in the certification standards which may vary for particular languages according to the extent of their usage within each state, the availability of bilingual persons to serve as interpreters, and other practical considerations.

This Act establishes criteria *only* for "certified interpreters." There is no use of, reference to, or definition of the term "qualified interpreter." Attempting to define a level of interpreter below that of a "certified interpreter" is problematic and unworkable.

§3. IMPLEMENTING RESPONSIBILITIES

A. The Supreme Court shall be responsible for ensuring language interpreter certification, continued proficiency, and discipline. The Supreme Court shall prescribe standards and procedures for the recruitment, testing, certification, evaluation, compensation, duties, professional conduct, continuing education, certification renewal, and other matters relating to interpreters as prescribed in this Act.

Commentary:

The establishment and implementation of a statewide interpreter program is a substantial undertaking. It is recommended that the state Supreme Court initiate such an effort through the establishment of a Court Interpreter Advisory Panel made up of a broad range of trial and appellate judges, court administrative staff, lawyers, court interpreters practicing in the state; and experts in linguistics, interpretation, education, and occupational testing and certification. Such a panel, in conjunction with the administrative office of the courts, should conduct studies of the language interpreter needs of the courts of the state and make recommendations to the Supreme Court and to the administrative office of courts concerning interpreter needs and interpreter program implementation. The recommendations should address such matters as: (1) the designation of those languages for which there should be certification programs; (2) the establishment and monitoring of a statewide interpreter testing and certification program; (3) the establishment of periodic interpreter certification renewal requirements, (4) the promulgation of guidelines to assist judges in determining when a non-certified interpreter may be permitted to act as an interpreter in the absence of a certified interpreter, and (5) the establishment of statewide standards of practice and appropriate professional conduct for interpreters.

The Court Interpreters Advisory Panel, in conjunction with the administrative office of the courts, should assist in developing policies regarding interpreter training, mandatory continuing education, and recruitment of potential interpreters.

Of primary significance is the initial determination by the Court Interpreters Advisory Panel of those languages which, because of their predominance, require a testing and certification program. These determinations may require surveys of individual court needs for interpreters and the examination of demographic trend data.

It is anticipated that this Advisory Panel would be reimbursed only for travel expenses related to attendance at Advisory Panel meetings. The panel would rely on the state court administrative office for staff and clerical support.

Special note on testing and certification programs.

There is growing recognition among the states and the professional community of court interpreters for the need to develop interstate testing and certification programs as a way to make testing and certification in many languages affordable for all states. The standardized tests can be shared among states and incorporated by reference into state laws, rules promulgated by supreme courts, or by administrative regulations of administrative offices of the courts. Prior to drafting legislation or rules, policy makers in the states should explore whether progress has been made toward establishing programs and standards that can be adopted by reference or used as the foundations for state programs.

C. Pursuant to Supreme Court rule, the administrative office of the courts shall administer and manage the operations of the State Court Interpreter Program.

Commentary:

The administrative office of the courts must undertake to develop the structure and the mechanics necessary to administer a court interpreter program. The specific

responsibilities of the AOC should be established by Supreme Court rule and may include some or all of the following:

- (1) To establish interpreter proficiency standards;
- (2) To designate languages for certification;
- (3) To establish programs for the recruitment, training, legal orientation, testing, evaluation and certification of interpreters consistent with the proficiency standards;
- (4) To develop resources for interpreter continuing education and recertification;
- (5) To establish, maintain, and publish a current directory of certified interpreters;
- (6) To adopt and disseminate to each court an approved fee schedule for certified and non-certified interpreters;
- (7) To set interpreter certification fees as may be necessary;
- (8) To establish procedural standards and guidelines for in-court interpreted proceedings to address such matters as: modes of interpreting, appropriate procedure for correcting interpretation mistakes, interpreter fatigue and time limits for continuous in-court interpretation, and when the use of multiple interpreters working in shifts or concurrently is indicated;
- (9) To establish, administer or recommend a process to review and respond to allegations of violations the code of professional conduct for interpreters, including decertification or other disciplinary measures.

The certification process encompasses recruitment, training, testing, and evaluation of interpreters. The specialized language proficiency standards, testing criteria, and evaluation processes clearly require detailed language expertise.

Part of the certification process should involve a comprehensive orientation of interpreters to the judicial system to ensure their familiarity with the legal system,

including the nature of the various criminal, civil, and other judicial proceedings, legal terminology, and the roles of officials involved in various legal settings.

Furthermore, a court interpreter program should include a component responsible for the continuing education or recertification of existing interpreters. Ideally, this program should include a system for evaluating and monitoring interpreter performance and should have the capacity to evaluate any questions of conflict of interest or ethical violations involving certified court interpreters.

In addition, the administrative office of courts must maintain and disseminate a current list of certified interpreters to the courts throughout the state. This certification list should be updated on a regular basis to be a reliable source for courts in appointing certified interpreters.

The administrative office of courts may also establish and promulgate standards or recommended guidelines and set forth appropriate levels of compensation that should be paid to interpreters, either in the form of salary or fees. Such standards or recommended guidelines may include salary schedules, rates for per diem or contract interpreters, and minimum compensation standards for an appearance in court. Rules that govern travel expense reimbursement for other court employees, or in exceptional cases for expert witnesses, should also apply to court interpreters. The compensation schedule may be standard for all jurisdictions throughout the state, or it may to reflect cost of living differentials or other relevant local conditions. Regardless of the method employed to compensate interpreters, the compensation standards should be adequate to ensure the availability of interpreters.

D. The director of the administrative office of the courts shall collect and analyze statistics pertinent to

interpreter utilization. This report may be made a part of the annual report of the judiciary, and contain analyses and recommendations for the improvement of the court interpreter program.

Commentary:

It is important to have an accurate overview of the extent of the need for and use of certified and non-certified interpreters statewide for both management and budgetary reasons. Collecting data regarding the *need* for interpreters is complex, since records are not normally kept of services that can not be provided. Data regarding the actual *use* of interpreters should be more readily available. The interpreter services programs should maintain records regarding the number of salaried interpreter employees, if any, and the number and cost of each interpreter appointment. In any case, the cost of interpreter services for each jurisdiction and statewide, and trends in interpreter requests and use rates, should be monitored for program management and planning purposes.

§4. CERTIFIED INTERPRETER REQUIRED

A. When an interpreter is requested or when the appointing authority determines that a principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed.

to app. with shall appoint

Commentary:

The right to an interpreter accrues to the "party in interest." Recognition of the need for an interpreter may arise from a request by a party or counsel for the services of an interpreter, from the court's own voir dire of a party or witness, or from disclosures made to the court from parties,

counsel, court employees or other persons familiar with the ability of the person to understand and communicate in English. When a judge recognizes that a "party in interest" requires an interpreter, an interpreter *shall* be appointed.

This portion of the Act embodies and implements the policy declaration set out in §1 of the Act: to provide certified interpreters in all state legal and administrative proceedings where the services of an interpreter are required to secure the rights of non-English speaking persons or for the administration of justice. As a result of that policy declaration, the statute is unequivocal in asserting that an individual who has a limited ability to speak or understand the English language, who is a party in interest or a witness, is entitled to the assistance of a certified interpreter throughout the legal proceeding, or for the duration of the witness' testimony. Events included in legal proceedings encompass interviews between counsel and client, advisements regarding procedure or rights that are conducted out of the presence of counsel or the judge, and readings or other translations of court documents that are evidence in the case or that are relied on for dispositional decisions by the court.

B. The appointing authority may appoint a non-certified interpreter only upon a finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. A non-certified interpreter may be appointed only after the appointing authority has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

Commentary:

Allowance is made for the appointment of a non-certified interpreter, but only after diligent, good faith efforts are made to secure a certified interpreter. A provision for the use of a non-certified interpreter reflects the practical realities of court operations. The exception to the general rule that certified interpreters must be provided acknowledges that jurisdictions may not have access to certified interpreters in all languages for all cases. The uniqueness of the language required, the geographical location of the court, the season of the year, and dozens of other reasons may militate against the availability of a certified interpreter for a particular language on any given date and time. The non-certified interpreter alternative should be used only as a rare exception to the general rule requiring certified interpreters.

A review of the totality of the circumstances is required, because whether a certified interpreter is "reasonably" available depends as much on the gravity of the proceeding and the jeopardy the party is placed in, as on how difficult it is to locate and obtain the services of a certified interpreter. For example, for a felony criminal trial a certified interpreter residing in a distant jurisdiction might be considered "reasonably available"; whereas in a misdemeanor case, or in a procedural hearing required to consider the release of a defendant from jail, "reasonable" availability may extend only to the geographic boundaries of the court.

C. Before appointing a non-certified interpreter, the appointing authority shall make a finding that the proposed non-certified interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court or administrative hearing setting, and that the proposed

non-certified interpreter has read, understands, and will abide by the Code of Professional Responsibility for language interpreters established in this State.

Commentary:

In order for a non-certified interpreter to be appointed, the judge or administrative hearing officer must inquire and be assured that the proposed non-certified interpreter appears to have the requisite knowledge and skills to perform adequately the task for which he or she is appointed. Equally important, the inquiry into the interpreter's skills and experience must include a verification that the interpreter has read, understands, and will abide by the requirements of the Code of Professional Responsibility established for interpreters.

It is recommended that the administrative office of the courts develop and make available a standard voir dire guide for use by the court for the purpose of inquiring into the experience and qualifications of non-certified interpreters.⁷

D. A summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record of the legal proceeding.

Commentary:

The requirement to make these findings on the record not only underscores the importance of using certified interpreters whenever possible, but provides a ready record for review of the circumstances under which a non-certified interpreter was used.

It is recommended that standard language for this voir dire and finding be developed for use by the judge when inquiring into the efforts made by court administrative personnel to secure the services of a certified interpreter.

§5. WAIVER OF INTERPRETER

A. A non-English speaking person may at any point in the proceeding waive the right to the services of an interpreter, but only when (1) the waiver is approved by the appointing authority after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver; (2) the appointing authority determines on the record that the waiver has been made knowingly, intelligently, and voluntarily; and (3) the non-English speaking person has been afforded the opportunity to consult with his or her attorney.

B. At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter.

Commentary:

The intent of this portion of the statute is to ensure that the non-English speaking parties or witnesses are made fully aware of their right to an interpreter. The waiver of the right to an interpreter must be knowing and voluntary, and with the approval of the judge or administrative hearing officer.

States may wish to develop a list of questions, analogous to the questions that are asked when a criminal defendant waives his or her rights to a jury trial and enters a plea of guilty, to demonstrate the knowing and voluntary waiver of the right to an interpreter.

§6. INTERPRETER OATH

All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Commentary:

This is standard statutory language that appears in a variety of current statutes. An interpreter should take an oath for the same reason that any person testifying in court takes an oath--to safeguard against the possibility of knowing and willful falsification of testimony.

The Code of Professional Responsibility addresses the various ethical responsibilities of interpreters for accuracy and completeness, impartiality, confidentiality, and other matters relating to the professional conduct of interpreters. The appointing authority should be alerted to potential conflicts of interest or other violations of the Code of Professional Responsibility that may arise. The sanction of removal is justified for any violations of that Code.

It is common practice for such oaths to be sworn to and maintained on file for all interpreters who are regularly employed by a court. This simplifies the court's inquiries on the record during procedural hearings. It is recommended, however, that an oath be read and sworn to in open court in all proceedings conducted before a jury.

§7. REMOVAL OF AN INTERPRETER IN INDIVIDUAL CASES

Any of the following actions shall be good cause for a judge to remove an interpreter:

Being unable to interpret adequately, including where the interpreter self-reports such inability;

Knowingly and willfully making false interpretation while serving in an official capacity;

Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

Failing to follow other standards prescribed by law and the Code of Professional Responsibility for interpreters.

Commentary:

It is important to recognize that interpreters are sometimes called to court to interpret for someone who speaks a different language from that spoken by the interpreter. This section authorizes the appointing authority to remove interpreters who are not competent to interpret for a case for this or any other reason, or who violate the Code of Professional Responsibility which each state should adopt as a companion to legislation. For a more complete discussion of the elements of such a code see the Model Code of Professional Responsibility published by the National Center for State Courts as a companion to this Model Act.

Appointing authorities should guard against appointing interpreters who may have an interest, or the appearance of an interest, in the outcome of the legal proceedings in which the interpreter is serving. A conflict of interest exists when an interpreter acts in a situation where the interpreter may be affected by an interest in the outcome of the case or is otherwise biased. For example, an interpreter should not serve as an interpreter for someone with whom the interpreter has a familial relationship, for someone with whom the interpreter has shared a residence, or for someone with whom the interpreter has a continuing business or professional

relationship. The trial court must be assured of interpretations that reflect the precise language of questions and answers of the witness. The interpretation should not be affected by any personal interest of the interpreter in the witness' case.

§8. COST OF INTERPRETER SERVICES

In all legal proceedings, the cost of providing interpreter services shall be borne by the court or administrative agency in which the legal proceeding originates.

Commentary:

A wide variety of funding mechanisms for courts and ancillary court services are used throughout the country. The Model Act takes the position that providing a certified interpreter is a basic and fundamental responsibility of the court, and that the court should bear the burden of the costs associated with providing an interpreter, as a cost of the court proceeding.

This approach does not foreclose subsequent assessments of costs for interpreter services to parties when that is appropriate, according to the same standards or rules that are applied to court costs in other litigation.

Drafters of this statute considered and rejected an approach that attempts to initially allocate the responsibility for acquiring and paying for the cost of the interpreter to the governmental entity which initiates the proceeding, for example, a local prosecutor, state's attorney, public defender, legal services office, or welfare service agency.

§9. APPROPRIATION

To achieve the purposes of this Act, \$ ___ is appropriated for the administrative office of courts to establish and operate a statewide court interpreter program.

Commentary:

Funding is sure to be a difficult and contentious issue. As with indigent defense, however, the costs of an interpreter program are essential to the administration of a fundamentally fair justice system.

A realistic assessment of the start-up costs of an interpreter program should be made by the administrative office of the courts. Efforts should be made to enlist the voluntary service of available experts to serve on the Court Interpreters Advisory Panel. Courts should also look to other states for program models and for the formation of interstate or other interjurisdictional service agreements. Nevertheless, AOC staff and administrative support will require state funding during the implementation stage. As with all court appropriations, this expenditure will require detailed and specific justification and substantiation.

To defray some of the costs of administering the interpreter certification program, the administrative office of courts should be authorized to assess a court interpreter certification fee or fees if necessary. Such fees may be designed to operate the court interpreter testing program on a self-sustaining basis once the start-up costs secured through a state appropriation are expended. Certification fees may cover administrative costs of testing, certification, and recertification.

Endnotes

¹ NCSC staff prepared for the work by compiling and summarizing statutes from all of the states. Statutes from states where laws have been enacted to develop statewide standards for interpreter services in the courts were then identified (e.g., Arkansas, California, New Mexico, Massachusetts, Washington), and their key concepts were extracted and summarized to provide a foundation for a discussion document. The discussion document drafted by NCSC staff was presented on July 14-16, 1993 in Williamsburg VA at a workshop attended by representatives of state and local courts and the interpreter profession throughout the country. The discussion draft was studied, critiqued, and redrafted by the conferees and NCSC staff to create a second draft document which was then submitted to the project Advisory Committee for additional review and comment. The resulting Model Act, therefore, is based both on existing state laws and the professional opinion of a broadly representative group of experienced judges, court administrative professionals, and interpreters. The individuals who contributed to the work are listed in the acknowledgments pages of this publication.

²Administrative hearings, although executive branch functions, are regularly appealed to the state court system where the reviewing court's decision is based on the administrative hearing record, including interpreted testimony. In addition, courts may require that administrative hearing litigants be accorded the same rights, constitutional and otherwise, as are accorded to criminal and civil litigants. This is a sensitive separation of powers matter, and some states may choose not to include administrative hearings within the ambit of their interpreter statutes.

³Criminal proceedings are intended to encompass grand jury proceedings and judicial inquests.

⁴ Although the term "translate" is frequently used interchangeably with or instead of "interpret," the activities are distinct and require different skills. Interpreting is oral rendering of one spoken language into another, while translation is the rendering of a written document from one language into a written document in another language. The Model Act recognizes that court interpreters will be required to perform *sight translations*, which involves reading and orally translating a written document.

⁵ See the Model Code of Professional Responsibility for Interpreters, which is a companion publication to this Model Court Interpreter Act.

⁶ It is the intent of this act to include parents of juveniles involved in court proceedings among principal parties in interest.

⁷ A model voir dire for this purpose has been developed by the California Judicial Council. A similar generic model is published by the National Center for State Courts (see Chapter 6, Figure 6.2).