



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Notes from  
10/17 mtg.

Court

1 AN ACT ...; relating to: providing interpreters for persons with limited ability to  
2 speak or understand the English language and making an appropriation.

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*Analysis by the Legislative Reference Bureau*  
**COURTS AND PROCEDURE**

**CIRCUIT COURTS**

This is a preliminary draft. An analysis will be provided in a later version.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 20.625 (1) (c) of the statutes is amended to read:

4 20.625 (1) (c) *Court interpreter fees.* The amounts in the schedule to pay  
5 interpreter fees reimbursed under s. 885.37 (4) (a) 2. 758.19 (8).

6 SECTION 2. 46.295 (2) (c) of the statutes is amended to read:

7 46.295 (2) (c) Legal services and civil court proceedings, excluding those  
8 services covered under s. 885.38 for which reimbursement is provided under s.  
9 758.19 (8).

1 SECTION 3. 758.19 (8) of the statutes is created to read:

2 758.19 (8) (a) From the appropriation under s. 20.625 (1) (c), the director of  
3 state courts shall reimburse counties 4 times each year for the actual expenses paid  
4 for interpreters required by circuit courts to assist persons with limited English  
5 proficiency under s. 885.38 (7) (a) 1. The amount of the maximum hourly  
6 reimbursement for interpreters shall be as follows:

7 1. Forty dollars for the first hour and \$20 for each one-half hour thereafter for  
8 interpreters certified under the requirements and procedures approved by the  
9 supreme court.

10 2. Thirty dollars for the first hour and \$15 for each one-half hour thereafter

11 for qualified interpreters, as defined in s. 885.38 (1) (c).

12 *(b) Travel expenses* (b) To receive reimbursement under par. (a), a county must submit, on forms  
13 *256.25 (1)*  
*20.916 (P) (c)*  
*(4) (a)*

14 provided by the director of state courts, an accounting of the amount paid for  
15 expenses related to interpreters that are eligible for reimbursement under par. (a).

16 The forms must include expenses *the preceding* for a 3-month period and must be submitted within

17 90 days after *that* the 3-month period has ended. The director of state courts may not

18 reimburse a county for any expenses related to interpreters that are submitted after  
19 the 90-day period has ended. If moneys are insufficient to pay the full

20 reimbursement to the counties, the director of state courts may prorate the payments

21 ~~or may request that the joint committee on finance take action under s. 13.101.~~

22 Reimbursement under par. (a) first applies to interpreters expenses incurred on the

23 first day of the 4th month beginning after the effective date of this paragraph ....

24 [revisor inserts date].

25 (c) The director of state courts shall annually adjust the maximum

reimbursement *under par. (a)* to counties for fees paid for interpreters under par. (a) to reflect the

1 changes in the consumer price index for all urban consumers, U.S. city average, as  
2 determined by the U.S. department of labor, with the adjusted limit to apply to  
3 interpreter services provided subsequent to the adjustments.

4 SECTION 4. 814.67 (1) (am) of the statutes is created to read:

5 814.67 (1) (am) For attending before a circuit court:

6 1. For witnesses, \$16 per day.

7 2. For interpreters, a fee established by the county.

8 SECTION 5. 814.67 (1) (b) (intro.) of the statutes is amended to read:

9 814.67 (1) (b) (intro.) For attending before ~~any other court~~ the court of appeals  
10 or the supreme court:

11 SECTION 6. 814.67 (1) (b) 2. of the statutes is amended to read: *Determined*

12 814.67 (1) (b) 2. For interpreters, ~~\$35 per one-half day~~ a fee *established* by the  
13 *supreme* court.

14 *AM. (c) 814.67 (1) (c) travel at state rate.*  
15 SECTION 7. 885.37 (1) (a) of the statutes is repealed.

16 SECTION 8. 885.37 (1) (b) of the statutes is amended to read:

17 885.37 (1) (b) If a municipal court has notice that a person ~~who fits any of the~~  
18 ~~criteria under par. (a)~~ has a language difficulty because of the inability to speak or  
19 understand English, has a hearing impairment, is unable to speak or has a speech  
20 defect, the court shall make a factual determination of whether the language  
21 difficulty or the hearing or speaking impairment is sufficient to prevent the  
22 individual from communicating with his or her attorney, reasonably understanding  
23 the English testimony or reasonably being understood in English. If the court  
24 determines that an interpreter is necessary, the court shall advise the person that  
25 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

1 of the right to an interpreter is effective only if made voluntarily in person, in open  
2 court and on the record.

3 **SECTION 9.** 885.37 (2) of the statutes is repealed.

4 **SECTION 10.** 885.37 (4) (a) of the statutes is repealed and recreated to read:

5 885.37 (4) (a) The necessary expense of furnishing an interpreter for an  
6 indigent person in a municipal court shall be paid by the municipality.

7 **SECTION 11.** 885.37 (5) (a) of the statutes is amended to read:

8 885.37 (5) (a) If a court under sub. (1) ~~or (2)~~ or an agency under sub. (3) decides  
9 to appoint an interpreter, the court or agency shall follow the applicable procedure  
10 under par. (b) or (c).

11 **SECTION 12.** 885.38 of the statutes is created to read:

12 **885.38 Interpreters for persons with limited English language**  
13 **proficiency.** (1) In this section:

14 (a) "Court proceeding" means any proceeding before a court of record.

15 (b) "Limited English proficiency" means any of the following:

16 1. The inability, because of the use of a language other than English, to  
17 adequately understand or communicate effectively in English in a court proceeding.

18 2. The inability, due to a speech impairment, hearing loss, deafness,  
19 deaf-blindness, or other disability, to adequately hear, understand, or communicate  
20 effectively in English in a court proceeding.

21 (c) "Qualified interpreter" means a person whom the court has found is readily  
22 able to interpret simultaneously and consecutively and to sight translate from  
23 English into the language of an individual with limited English proficiency and from  
24 the language of that individual into English in a court proceeding.

*(17) change*

1           (2) The supreme court shall establish the procedures and policies for the  
2 recruitment, training, and certification of persons to act as qualified interpreters in  
3 a court proceeding and for the coordination, discipline, retention, and training of  
4 those interpreters.

5           (3) (a) The court shall appoint a qualified interpreter for a person in a court  
6 proceeding if the court determines that the person has limited English proficiency  
7 and the person is one of the following:

8           1. A party in interest.

9           2. A witness.

10          3. An alleged victim, as defined in s. 950.02 (4).

11          4. A parent or legal guardian of a minor party in interest or the legal guardian  
12 of a party in interest.

13          5. A parent or legal guardian of a minor victim, as defined in s. 950.02 (4), or  
14 the legal guardian of a victim, as defined in s. 950.02 (4).

15          (b) The court may appoint more than one qualified interpreter in a court  
16 proceeding when necessary.

17          (c) If a person with limited English proficiency <sup>as defined in sub.(1)(b) 2.</sup> is part of a jury panel in a court  
18 proceeding, the court shall appoint a qualified interpreter for that person.

19          (d) If a person with limited English proficiency requests the assistance of the  
20 clerk of circuit courts regarding a legal proceeding, the clerk may provide the  
21 assistance of a qualified interpreter to respond to the person's inquiry ~~if the chief~~  
22 ~~judge of the judicial administrative district has developed written policies allowing~~  
23 ~~the clerk to provide the assistance of a qualified interpreter.~~

24          (e) A qualified interpreter appointed under this subsection may, with the  
25 approval of the court, provide interpreter services outside the court room that are

1 related to the court proceedings, including during court-ordered psychiatric or  
2 medical exams or mediation.

3 (f) A qualified interpreter shall be appointed or provided under this subsection  
4 without regard to the ability of the person with limited English proficiency to pay for  
5 the costs of the qualified interpreter.

6 (4) (a) A person with limited English proficiency may waive the right to a  
7 qualified interpreter at any point in a court proceeding if all of the following  
8 conditions are met:

9 1. The court explains to the person with limited English proficiency on the  
10 record and through a qualified interpreter the nature and effect of the waiver.

11 2. The court determines on the record that the waiver has been made  
12 knowingly, intelligently, and voluntarily.

13 3. The person with limited English proficiency has been given an opportunity  
14 to consult with an attorney regarding the waiver of the right to a qualified  
15 interpreter.

16 4. The court approves the waiver.

17 (b) At any point in the court proceeding, for good cause, the person with limited  
18 English proficiency may retract his or her waiver and request that a qualified  
19 interpreter be appointed.

20 (5) Every qualified interpreter, before commencing his or her duties in a court  
21 proceeding, shall take a sworn oath that he or she will make a true and impartial  
22 interpretation. The supreme court may approve a uniform oath for qualified  
23 interpreters.

*Go back to  
885.37(1)(b)*

1 (6) Any party to a court proceeding may object to the use of any qualified  
2 interpreter for good cause. The court may remove a qualified interpreter for good  
3 cause.

4 (7) (a) Except as provided in par. (b), the necessary expenses of providing  
5 qualified interpreters to persons with limited English proficiency under this section  
6 shall be paid as follows:

7 1. In all <sup>circuit</sup> court proceedings before a circuit court, and when the clerk of circuit  
8 court uses a qualified interpreter under sub. (3) (d), the county shall pay the  
9 expenses. *Reimbursement under s. 758.19(g)(a)*

10 2. In all court proceedings before the court of appeals, the court of appeals shall  
11 pay the expenses.

12 3. In all court proceedings before the supreme court, the supreme court shall  
13 pay the expenses.

14 (b) The public defender shall pay the necessary expenses of ~~providing~~ <sup>use current</sup> an  
15 interpreter to persons represented by the public defender. *(1)(b)*

16 **SECTION 13.** 905.015 of the statutes is amended to read:

17 **905.015 Interpreters for persons with language difficulties, limited**  
18 **English proficiency, or hearing or speaking impairments.** If an interpreter  
19 for a person with a language difficulty, limited English proficiency, as defined in s.  
20 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a  
21 communication which is privileged by statute, rules adopted by the supreme court,  
22 or the U.S. or state constitution, the interpreter may be prevented from disclosing  
23 the communication by any person who has a right to claim the privilege. The  
24 interpreter may claim the privilege but only on behalf of the person who has the

1 right. The authority of the interpreter to do so is presumed in the absence of evidence  
2 to the contrary.

3 **SECTION 9409. Effective dates; circuit courts.**

4 (1) The treatment of sections 20.625 (1) (c), 46.295 (2) (c), 758.19 (8), 814.67 (1)  
5 (am) and (b) (intro.) and 2., 885.37 (1) (a) and (b), (2), (4) (a), and (5) (a), 885.38, and  
6 905.015 of the statutes takes effect on the first day of the 7th month beginning after  
7 publication. *April 1, 2002*

8 (END)



SOA (10/12)

DOA:.....Coomber - Court interpreters

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT <sup>DON'T GEN. CAT.</sup> <sup>Court</sup> relating to: providing interpreters for persons with limited ability to

2 speak or understand the English language and making an appropriation.

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**CIRCUIT COURTS**

This is a preliminary draft. An analysis will be provided in a later version.

insert  
and →

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 20.625 (1) (c) of the statutes is amended to read:

4 20.625 (1) (c) *Court interpreter fees.* The amounts in the schedule to pay

5 interpreter fees reimbursed under s. 885.37 (4) (a) 2. 758.19 (8).

6 SECTION 2. 46.295 (2) (c) of the statutes is amended to read:

1 46.295 (2) (c) Legal services and civil court proceedings, excluding those  
2 services covered under s. 885.38 for which reimbursement is provided under s.  
3 758.19 (8).

4 SECTION 3. 758.19 (8) of the statutes is created to read:

5 758.19 (8) (a) From the appropriation under s. 20.625 (1) (c), the director of  
6 state courts shall reimburse counties 4 times each year for the actual expenses paid  
7 for interpreters required by circuit courts to assist persons with limited English  
8 proficiency under s. 885.38 (7) (a) 1. <sup>insert 2-8V</sup> The amount of the maximum hourly  
9 reimbursement for <sup>court</sup> interpreters shall be as follows:

10 1. Forty dollars for the first hour and \$20 for each <sup>additional</sup> ~~one-half~~ hour thereafter for  
11 <sup>qualified</sup> interpreters certified under the requirements and procedures approved by the  
12 supreme court. 0.5

13 2. Thirty dollars for the first hour and \$15 for each <sup>additional</sup> ~~one-half~~ hour thereafter  
14 for <sup>qualified</sup> interpreters, as defined in s. 885.38 (1) (c). 0.5

15 (b) To receive reimbursement under par. (a), a county must submit, on forms  
16 provided by the director of state courts, an accounting of the amount paid for  
17 expenses related to <sup>court</sup> interpreters that are eligible for reimbursement under par. (a).  
18 The forms must include expenses for <sup>the preceding</sup> 3-month period and must be submitted within  
19 90 days after <sup>that</sup> the 3-month period has ended. The director of state courts may not  
20 reimburse a county for any expenses related to <sup>court</sup> interpreters that are submitted after  
21 the 90-day period has ended. If moneys are insufficient to pay the full  
22 reimbursement to the counties, the director of state courts may prorate the payments  
23 or may request that the joint committee on finance take action under s. 13.101. <sup>5</sup>

24 Reimbursement under par. (a) first applies to <sup>court</sup> interpreters' expenses incurred on the

1 ~~first day of the 4th month beginning after~~ ~~the~~ effective date of this paragraph ...  
2 [revisor inserts date].

3 (c) The director of state courts shall annually adjust the maximum  
4 <sup>hourly</sup> reimbursement to counties for fees paid for <sup>court</sup> interpreters under par. (a) to reflect the  
5 changes in the consumer price index for all urban consumers, U.S. city average, as  
6 determined by the U.S. department of labor, with the adjusted limit to apply to  
7 interpreter services provided subsequent to the adjustments.

8 SECTION 4. 814.67 (1) (am) of the statutes is created to read:

9 814.67 (1) (am) For attending before a circuit court,  
10 1. For witnesses, \$16 per day.  
11 2. For interpreters, a fee established by the county.

12 SECTION 5. 814.67 (1) (b) (intro.) of the statutes is amended to read:

13 814.67 (1) (b) (intro.) For attending before any other court the court of appeals  
14 or the supreme court:

15 SECTION 6. 814.67 (1) (b) 2. of the statutes is amended to read:

16 814.67 (1) (b) 2. For interpreters, ~~\$35 per one half day~~ a fee <sup>determined</sup> established by the

17 <sup>supreme court.</sup> underscore underscore  
18 SECTION 7. 885.37 (1) (a) of the statutes is repealed.

19 SECTION 8. 885.37 (1) (b) of the statutes is amended to read:

20 885.37 (1) (b) If a municipal court has notice that a person who ~~fits any of the~~  
21 ~~criteria under par. (a)~~ has a language difficulty because of the inability to speak or  
22 understand English, has a hearing impairment, is unable to speak or has a speech  
23 defect, the court shall make a factual determination of whether the language  
24 difficulty or the hearing or speaking impairment is sufficient to prevent the  
25 individual from communicating with his or her attorney, reasonably understanding

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1 the English testimony or reasonably being understood in English. If the court  
2 determines that an interpreter is necessary, the court shall advise the person that  
3 he or she has a right to a qualified interpreter and that, if the person cannot afford  
4 one, an interpreter will be provided for him or her at the public's expense. Any waiver  
5 of the right to an interpreter is effective only if made voluntarily in person, in open  
6 court and on the record.

7 **SECTION 9.** 885.37 (2) of the statutes is repealed.

8 **SECTION 10.** 885.37 (4) (a) of the statutes is repealed and recreated to read:

9 885.37 (4) (a) The necessary expense of furnishing an interpreter for an  
10 indigent person in a municipal court shall be paid by the municipality.

11 **SECTION 11.** 885.37 (5) (a) of the statutes is amended to read:

12 885.37 (5) (a) If a court under sub. (1) ~~or (2)~~ or an agency under sub. (3) decides  
13 to appoint an interpreter, the court or agency shall follow the applicable procedure  
14 under par. (b) or (c).

15 **SECTION 12.** 885.38 of the statutes is created to read:

16 **885.38 Interpreters for persons with limited English language**

17 *(b) in circuit and appellate courts*  
~~proficiency~~ (1) In this section:

18 (a) "Court proceeding" means any proceeding before a court of record.

19 (b) "Limited English proficiency" means any of the following:

20 1. The inability, because of the use of a language other than English, to  
21 adequately understand or communicate effectively in English in a court proceeding.

22 2. The inability, due to a speech impairment, hearing loss, deafness,  
23 deaf-blindness, or other disability, to adequately hear, understand, or communicate  
24 effectively in English in a court proceeding.

1 (c) "Qualified interpreter" means a person whom the court has found is readily  
 2 ~~able to interpret simultaneously and consecutively and to sight translate from~~  
 3 ~~English into the language of an individual with limited English proficiency and from~~  
 4 ~~the language of that individual into English in a court proceeding.~~ insert 5-9 ✓

5 (2) The supreme court shall establish the procedures and policies for the  
 6 recruitment, training, and certification of persons to act as qualified interpreters in  
 7 a court proceeding and for the coordination, discipline, retention, and training of  
 8 those interpreters.

9 (3) (a) The court shall appoint a qualified interpreter for a person in a court  
 10 proceeding if the court determines that the person has limited English proficiency  
 11 and the person is one of the following:

12 1. A party in interest.

13 2. A witness.

14 3. An alleged victim, as defined in s. 950.02 (4).

15 4. A parent or legal guardian of a minor party in interest or the legal guardian  
 16 of a party in interest.

17 5. A parent or legal guardian of a minor victim, as defined in s. 950.02 (4), or  
 18 the legal guardian of a victim, as defined in s. 950.02 (4).

19 (b) The court may appoint more than one qualified interpreter in a court  
 20 proceeding when necessary. , as defined in sub. (1)(b)2. ✓

21 (c) If a person with limited English proficiency is part of a jury panel in a court  
 22 proceeding, the court shall appoint a qualified interpreter for that person.

23 (d) If a person with limited English proficiency requests the assistance of the  
 24 clerk of circuit courts regarding a legal proceeding, the clerk may provide the  
 25 assistance of a qualified interpreter to respond to the person's inquiry if the chief

1 judge of the judicial administrative district has developed written policies allowing  
2 the clerk to provide the assistance of a qualified interpreter.

3 (e) A qualified interpreter appointed under this subsection may, with the  
4 approval of the court, provide interpreter services outside the court room that are  
5 related to the court proceedings, including during court-ordered psychiatric or  
6 medical exams or mediation.

7 (f) A qualified interpreter shall be appointed or provided under this subsection  
8 without regard to the ability of the person with limited English proficiency to pay for  
9 the costs of the qualified interpreter.

10 (4) (a) A person with limited English proficiency may waive the right to a  
11 qualified interpreter at any point in a court proceeding if ~~all~~ of the following  
12 conditions are met:

13 1. The court explains to the person with limited English proficiency on the  
14 record and through a qualified interpreter the nature and effect of the waiver.

15 2. The court determines on the record <sup>in open court</sup> that the waiver has been made  
16 knowingly, intelligently, and voluntarily.

17 3. The person with limited English proficiency has been given an opportunity  
18 to consult with an attorney regarding the waiver of the right to a qualified  
19 interpreter.

20 4. The court approves the waiver.

21 (b) At any point in the court proceeding, for good cause, the person with limited  
22 English proficiency may retract his or her waiver and request that a qualified  
23 interpreter be appointed.

24 (5) Every qualified interpreter, before commencing his or her duties in a court  
25 proceeding, shall take a sworn oath that he or she will make a true and impartial

1 interpretation. The supreme court may approve a uniform oath for qualified  
2 interpreters.

3 (6) Any party to a court proceeding may object to the use of any qualified  
4 interpreter for good cause. The court may remove a qualified interpreter for good  
5 cause.

6 (7) (a) Except as provided in par. (b), the necessary expenses of providing  
7 qualified interpreters to persons with limited English proficiency under this section  
8 shall be paid as follows:

*in which the circuit court is located*

9 1. In all ~~court~~ proceedings before a circuit court and when the clerk of circuit  
10 court uses a qualified interpreter under sub. (3) (d) the county shall pay the  
11 expenses.

12 2. In all ~~court~~ proceedings before the court of appeals, the court of appeals shall  
13 pay the expenses.

14 3. In all ~~court~~ proceedings before the supreme court, the supreme court shall  
15 pay the expenses.

16 (b) The public defender shall pay the ~~necessary~~ <sup>state</sup> expenses of providing an  
17 <sup>for</sup> interpreter to persons represented by the public defender.

Inscr 7-17

18 SECTION 13. 905.015 of the statutes is amended to read:

19 **905.015 Interpreters for persons with language difficulties, limited**  
20 **English proficiency, or hearing or speaking impairments.** If an interpreter  
21 for a person with a language difficulty, limited English proficiency, as defined in s.  
22 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a  
23 communication which is privileged by statute, rules adopted by the supreme court,  
24 or the U.S. or state constitution, the interpreter may be prevented from disclosing  
25 the communication by any person who has a right to claim the privilege. The

1 interpreter may claim the privilege but only on behalf of the person who has the  
2 right. The authority of the interpreter to do so is presumed in the absence of evidence  
3 to the contrary.

Insert 13  
8-2 4

**SECTION 9409. Effective dates; circuit courts.**

5 (1) <sup>(c) Court interpreters.</sup> The treatment of sections 20.625 (1) (c), 46.295 (2) (c), 758.19 (8), 814.67 (1)  
6 (am) <sup>and (c) title</sup> and (b) (intro.) and 2., 885.37 (1) (a) and (b), (2), (4) (a), and (5) (a), 885.38, and  
7 905.015 of the statutes takes effect on the ~~first day of the 7th month~~ beginning after  
8 publication. *April 1, 2002*

(END)



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0094/lins  
RPN:kmg:kjf

1 insert anl:

*LPS: make this insert all single-space.*

2 Under current law, if a court knows that a person charged with a crime, a parent  
3 or child subject to ~~children or~~ juvenile court proceedings, a person subject to mental  
4 health or protective service ~~commitment~~ <sup>proceedings</sup>, or a witness to one of those proceedings, is  
5 unable to communicate and understand English because of a language difficulty or  
6 a disability, the court is required to tell the person that he or she has the right to an  
7 interpreter. If the person cannot afford to pay for an interpreter, current law requires  
8 the court to provide an interpreter at the public's expense. Current law allows courts  
9 to authorize the use of interpreters in other court proceedings. Administrative  
10 agencies are also authorized under current law to use interpreters in contested cases.

11 Currently, the expenses of furnishing an interpreter in the supreme court, court  
12 of appeals, or circuit court is paid by the director of state courts. If the state public  
13 defender needs an interpreter to assist in preparing an indigent for a court  
14 proceedings, current law requires the state public defender to pay the expenses. In  
15 municipal court and before administrative agencies, the unit of government <sup>involved</sup> is  
16 required to pay the interpreter expenses. Current law limits the amount of fees for  
17 interpreters before <sup>for</sup> municipal court or an agency to \$10 per ~~hour~~ <sup>→ 0.5</sup> day or higher fees  
18 established by the unit of government and \$35 per ~~hour~~ <sup>→ 0.5</sup> day before a court of record  
19 or when assisting the state public defender. Current law also requires the payment  
20 of mileage at the rate of 20 cents per mile.

21 Under this bill, the current law remains unchanged for interpreters ~~provided~~  
22 ~~for~~ <sup>at</sup> a municipal court or <sup>an</sup> agency proceeding and when assisting the public defender.

23 Under the bill, if a person who is unable to understand or communicate in English

1 due to a disability or because of his or her use of a language other than English is  
 2 involved in a proceeding before a circuit court, court of appeals or supreme court, that  
 3 court is required to appoint an interpreter for the person. The interpreter must be  
 4 able to readily and accurately communicate with the <sup>PERSON</sup> individual with limited English  
 5 ~~proficiency~~, explain the meaning of the court-related proceedings in understandable  
 6 terms to that <sup>PERSON</sup> individual, and repeat the statements of that person to the court in  
 7 English. Under the bill, if a person with limited English proficiency due to a  
 8 disability is serving on a jury in a circuit court, the court must appoint an interpreter  
 9 to assist the person. The bill also allows the clerk of court to provide an interpreter  
 10 to assist a person with limited English proficiency when that person asks the court  
 11 for assistance regarding a legal proceeding, such as how to bring an action to obtain  
 12 a domestic abuse injunction. Interpreters are provided without charge under the bill  
 13 ~~in court proceedings~~ without regard to the person's ability to pay for that  
 14 interpreter's services.

15 Under the bill, the fee paid to an interpreter in the court of appeals or supreme  
 16 court is determined by the supreme court. The expenses of providing an interpreter  
 17 at the court of appeals or supreme court are paid by that court. If the interpreter is  
 18 used at the circuit court level, the expenses of providing an interpreter at the circuit  
 19 court <sup>are</sup> ~~is~~ paid by the county. The bill establishes the mileage rate used for state  
 20 employees as the mileage rate paid to interpreters. The bill requires the director of  
 21 state courts to reimburse counties for expenses incurred in providing interpreters  
 22 four times each year, at a rate of \$30 dollars for the first hour and \$15 for each  
 23 additional ~~one-half~~ <sup>0.5</sup> hour. If the interpreter is certified under requirements and  
 24 procedures approved by the supreme court, the reimbursement rate under the bill  
 25 is \$40 dollars for the first hour and \$20 for each additional ~~one-half~~ <sup>0.5</sup> hour. The bill

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1 requires counties to submit reimburse<sup>ment</sup> request forms within 90 days after each  
2 3-month period has ended or lose reimbursement for that period. Under the bill, if  
3 state moneys are insufficient to fully reimburse the counties, the director of state  
4 courts shall<sup>must</sup> prorate the reimbursements.

5 The bill allows a person with limited English proficiency to waive the  
6 appointment of an interpreter if the court determines on the record in open court that  
7 the waiver has been made voluntarily, and allows the person to retract that waiver  
8 at any time during the court proceedings for good cause. \* put p 2, lines  
9 19d20 here.

10 insert 2-8: ✓

11 (No 9) The amount of the reimbursement for mileage shall be an amount equal to the  
12 mileage rate <sup>that</sup> which is set under s. 20.916 (8). ✓

14 insert 3-17: ✓

Sort;  
out-of-order

15 SECTION 1. 885.37 (title) of the statutes is amended to read:

16 885.37 (title) ~~Interpreters for persons with language difficulties or~~  
17 ~~hearing or speaking impairments~~ <sup>in</sup> municipal courts and administrative  
18 agencies. ~~agency contested cases~~

19 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.

20 SECTION 2. 814.67 (1) (c) of the statutes is amended to read: <sup>Mileage rate</sup>

21 814.67 (1) (c) For traveling, at the ~~mileage~~ <sup>rate that</sup> rate of 20 cents per mile equal to the <sup>plain</sup>  
~~mileage rate which~~ is set under s. 20.916 (8), going and returning from his or her  
22 residence if within the state; or, if without the state, from the point where he or she

1 crosses the state boundary to the place of attendance, and returning by the usually  
2 traveled route between such points.

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

4 insert 5-4: ✓

5 **NoA** and accurately able to communicate with the individual with limited English  
6 proficiency, to explain the meaning of the court-related proceedings in  
7 understandable terms to that individual, and to repeat the statements of that person  
8 to the court in English. ✓

9  
10 insert 7-17: ✓

11 **NoA** assisting the state public defender in representing an indigent <sup>person</sup> in preparing for  
12 court proceedings.

13 (c) The county shall be reimbursed as provided <sup>in</sup> ~~under~~ s. 758.19 (8) for expenses  
14 paid under par. (a) 1. ✓

15 **Insert 8-2:** ✓

16 **SECTION 9309. Initial applicability; circuit courts.**

17 (1) COURT INTERPRETERS. The treatment of sections 20.625 (1) (c), 46.295 (2) (c),  
18 758.19 (8), 814.67 (1) (am), ~~and~~ (b) (intro.) and 2., and (c), 885.37 (1) (a) and (b), (2),  
19 (4) (a), and (5) (a), 885.38, and 905.015 of the statutes first applies to interpreters  
20 used by <sup>a</sup> the clerk of court or appointed by <sup>a</sup> the court on the effective date of this  
21 subsection. ✓



STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin


Mailing Address:  
Post Office Box 7864  
Madison, WI 53707-7864



TOMMY G. THOMPSON  
GOVERNOR  
MARK D. BUGHER  
SECRETARY

**Date:** October 17, 2000

**To:** Steve Miller, Director  
Legislative Reference Bureau

**From:** Brett Coomber   
DOA - State Budget Office

**Subject:** **LRB Draft** – Statutory Language Drafts for the Wisconsin State Courts  
biennial budget requests.

**Circuit Court:**

**1. Court Interpreters:**

Please draft LRB draft 0094/3 as a new DOA draft that changes the reimbursement amount to counties and defines court interpreters.

Thank you for your time and assistance, if you have any questions, please call me at 266-8270.

Cc. Jim Johnston, Team Leader  
Justice Team

## Nelson, Robert P.

---

**From:** Suchman, David [David.Suchman@courts.state.wi.us]  
**Sent:** Wednesday, November 01, 2000 9:09 AM  
**To:** Nelson, Robert P.  
**Subject:** FW: Modifications to the Court Interpreter Statute



statute draft comments  
10-31.d...

David Suchman

> -----Original Message-----  
> From: Suchman, David  
> Sent: Wednesday, November 01, 2000 9:02 AM  
> To: 'Johnston, Jim'; 'Coomber, Brett'; 'Nelson, Bob'  
> Cc: Vandercook, Marcia  
> Subject: Modifications to the Court Interpreter Statute  
>  
> Marcia was able to meet with several members of the Court Interpreter  
> Committee to review the latest version of the court interpreter statute.  
> Attached are her (and their) comments. I assume that there is nothing  
> more that we should be doing at this point.  
>  
> <<Statute draft comments 10-31.doc>>  
>  
> David Suchman  
>

To: Jim Johnston  
Brett Coomber  
Bob Nelson  
David Suchman

From: Marcia Vandercook

Date: October 31, 2000

Re: Court interpreter statutes (LRB-0094)

At the judicial conference last Thursday, I met with several members of the court interpreter committee to discuss remaining issues on the draft bill. I also spoke with a group of four clerks (Outagamie, Iowa, Kenosha, and Milwaukee). Here is a synopsis of their comments and our requests for changes:

ok  
1) The current draft of §758.19(8)(a)1. sets a new hourly rate of \$40 per hour for certified interpreters and \$30 for noncertified interpreters, with subsequent hours prorated by the half-hour. Some counties pay by full hours and some prorate subsequent hours by tenths or quarters, but most clerks would appreciate direction and consistency. David Suchman remembers that the committee agreed on proration by half hours; my notes suggest quarter hours; the members who met at the judicial conference recommended tenths, consistent with attorney billing practices. Any of these units of proration would be fine.

ok  
2) The draft of §758.19(8)(a) and §814.67(1)(c) calls for mileage to be reimbursed at the state rate, and we would like to keep it that way. Apart from the clerk in Milwaukee, who rarely pays mileage, the clerks would like to use the state rate, so it would be one less thing to keep track of and do differently.

ok  
3) The draft of §758.19(8)(b) should be remain as is, with a quarterly schedule for submission of reimbursement requests. The clerks of court felt that an annual reimbursement period was too long for larger counties. They listed a number of reasons: the file of billings gets very thick; it's hard to keep caught up (despite the best intentions) if the due date for the paperwork only comes once a year; it's hard to remember any questions you may have had about the bill if it was submitted more than a few months ago; other reimbursement requests and reports are submitted to the state on a quarterly basis; a year is too long to wait to be reimbursed for services rendered at the beginning of the year; it doesn't mesh well with the schedule for submitting budget requests to the counties.

ok  
4) §814.67(b) should provide that the fee for interpreters in the court of appeals and supreme court will be determined by the supreme court. The clerk of the supreme court arranges and pays for interpreting services in both courts.

7  
5) We'd like to refine the language of §885.38(1)(c), definition of qualified interpreter:  
" 'Qualified interpreter' means a person who is readily able to communicate with the person who has limited English proficiency, and who can orally transfer the meaning of statements to and

from English and the language spoken by the person in the context of a court proceeding. A qualified interpreter must be able to interpret readily and accurately, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary.”

✓ 6) The draft of §885.38(3)(a)2. allows interpreters for witnesses. We would like to limit this to witnesses while testifying. There is rarely a need to interpret the whole trial for a witness.

✓ 7) The group agreed that we should return to a simpler waiver provision and that it shouldn't always take an interpreter to waive an interpreter. §885.38(4)(a) should read: “A person may waive the right to a qualified interpreter at any point in the court proceedings if the court advises the person of the nature and effect of the waiver, and if the court determines on the record that the waiver has been made knowingly, intelligently, and voluntarily.” §(b) can stay the same.

✓ 8) You may recall that we talked about whether there should be a provision to the effect that the need to find a qualified interpreter can constitute good cause for tolling certain time limits. This would come up primarily in initial appearances in criminal cases, juvenile detention hearings, and mental health proceedings. §885.38(6 ½) could read: “The need for additional time to locate a qualified interpreter may constitute good cause to toll time limitations in a court proceeding.” It might also be specifically mentioned under §51.20, §938.315, and §971.10.

No? ✓  
The group that met at the judicial conference thought this provision should be included, but the issue has not been addressed by the full committee. I am uncomfortable inserting it without better discussion of the balancing involved.

No-  
see A  
(0)  
9) The draft of §885.38(7)(a)(1), explaining who pays, should say that in circuit court the county shall pay the expenses and shall be reimbursed pursuant to §758.19(8). This language doesn't change anything, but it will keep the counties from becoming alarmed when reading this section by itself.

Thank you.



48.375 (7) (d) Im. (b)(c)(f)

48.315 (Im) (a) (d) (e) (g)

(7) (d) Im.

3 days unless minor consents

if fail to comply, temporary reserve judge

unless - continuance minor - ok  
disqualification of judge =  
absence = her fault

(Im)

other legal actions not applicable

continuance dia - not involved

consent decree - not applicable

joinder " "

do not apply parent consent

X-ref in 48.375 (7) (d) Im.

add X to (b)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0094/3dn  
RPN:kmg:rs

Brett Coomber:

I made changes in the draft based on the memo I received from Marcia Vandercook. Paragraphs 1. through 4. of her memo do not appear to require any change in the draft.

The language suggested in paragraph 5. does not quite fit in a definition ~~of~~, so I reworded it to ~~a~~ a definition. Review ~~the~~ new s. 885.38 (1) (c) to see if I captured the intent.

I made <sup>the</sup> changes suggested in paragraphs 6. and 7.

Although ~~she~~ <sup>the</sup> was not sure if the change should be made as suggested in paragraph 8, I did make the changes necessary to show ~~the~~ <sup>the</sup> what is involved. We can remove those sections if necessary. See new ss. 48.315 (1) (h), 48.375 (7) (d) 1m., 885.38 (7), and 938.315 (1) (h). The only "problem" with these changes is the necessity to make a change in s. 48.375 (7) (d) 1m., which is part of the section dealing with a minor's petition to obtain an abortion.

I did not make the change as suggested in paragraph 9., but I did move the language from (c) of s. 885.38 (8) <sup>to</sup> ~~be~~ <sup>to</sup> par. (a) 1. of s. 885.38 (8).

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.state.wi.us



Soon  
**State of Wisconsin**  
**2001 - 2002 LEGISLATURE**

LRB-0094/2  
RPN:kmg:rs

V-Note

DOA:.....Coomber – Court interpreters

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT** <sup>DON'T GEN. CAT.</sup> **relating to:** providing court interpreters for persons with limited

2 ability to speak or understand the English language and making an

3 appropriation.

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**CIRCUIT COURTS**

Under current law, if a court knows that a person charged with a crime, a parent or child subject to juvenile court proceedings, a person subject to mental health or protective service proceedings, or a witness to one of those proceedings, is unable to communicate and understand English because of a language difficulty or a disability, the court is required to tell the person that he or she has the right to an interpreter. If the person cannot afford to pay for an interpreter, current law requires the court to provide an interpreter at the public's expense. Current law allows courts to authorize the use of interpreters in other court proceedings. Administrative agencies are also authorized under current law to use interpreters in contested cases.

Currently, the expenses of furnishing an interpreter in the supreme court, court of appeals, or circuit court is paid by the director of state courts. If the state public defender needs an interpreter to assist in preparing an indigent for a court proceedings, current law requires the state public defender to pay the expenses. In municipal court and before administrative agencies, the unit of government involved

*and accurately interpret, in a manner that conveys the meaning, tone, and spirit of the original statement*

*transfer*

is required to pay the interpreter expenses. Current law limits the amount of fees for interpreters before a municipal court or an agency to \$10 per 0.5 day or higher fees established by the unit of government and \$35 per 0.5 day before a court of record or when assisting the state public defender. Current law also requires the payment of mileage at the rate of 20 cents per mile.

*State employees who speak English*

Under this bill, the current law remains unchanged for interpreters at a municipal court or an agency proceeding and when assisting the public defender. Under the bill, if a person who is unable to understand or communicate in English due to a disability or because of his or her use of a language other than English is involved in a proceeding before a circuit court, court of appeals or supreme court, that court is required to appoint an interpreter for the person. The interpreter must be able to readily and accurately communicate with the person, explain the meaning of the court-related proceedings in understandable terms to that person, and repeat the statements of that person to the court in English. Under the bill, if a person with limited English proficiency due to a disability is serving on a jury in a circuit court, the court must appoint an interpreter to assist the person. The bill also allows the clerk of court to provide an interpreter to assist a person with limited English proficiency when that person asks the court for assistance regarding a legal proceeding, such as how to bring an action to obtain a domestic abuse injunction. Interpreters are provided without charge under the bill without regard to the person's ability to pay for that interpreter's services.

Under the bill, the fee paid to an interpreter in the court of appeals or supreme court is determined by the supreme court. The expenses of providing an interpreter at the court of appeals or supreme court are paid by that court. If the interpreter is used at the circuit court level, the expenses of providing an interpreter at the circuit court are paid by the county. The bill requires the director of state courts to reimburse counties for expenses incurred in providing interpreters four times each year, at a rate of \$30 dollars for the first hour and \$15 for each additional 0.5 hour. If the interpreter is certified under requirements and procedures approved by the supreme court, the reimbursement rate under the bill is \$40 dollars for the first hour and \$20 for each additional 0.5 hour. The bill requires counties to submit reimbursement request forms within 90 days after each 3-month period has ended or lose reimbursement for that period. Under the bill, if state moneys are insufficient to fully reimburse the counties, the director of state courts must prorate the reimbursements.

*knowingly, intelligently, and*

The bill allows a person with limited English proficiency to waive the appointment of an interpreter if the court determines on the record in open court that the waiver has been made voluntarily, and allows the person to retract that waiver at any time during the court proceedings for good cause. The bill establishes the mileage rate used for state employees as the mileage rate paid to interpreters.

*WFE - S/L*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.625 (1) (c) of the statutes is amended to read:

2           20.625 (1) (c) *Court interpreter fees.* The amounts in the schedule to pay  
3 interpreter fees reimbursed under s. ~~885.37 (4) (a) 2.~~ 758.19 (8).

4           **SECTION 2.** 46.295 (2) (c) of the statutes is amended to read:

5           46.295 (2) (c) ~~Legal services and civil court proceedings, excluding those~~  
6 services covered under s. 885.38 for which reimbursement is provided under s.  
7 758.19 (8).

8           **SECTION 3.** 758.19 (8) of the statutes is created to read:

9           758.19 (8) (a) From the appropriation under s. 20.625 (1) (c), the director of  
10 state courts shall reimburse counties 4 times each year for the actual expenses paid  
11 for interpreters required by circuit courts to assist persons with limited English  
12 proficiency under s. 885.38 <sup>§</sup> (a) 1. The amount of the reimbursement for mileage  
13 shall be an amount equal to the mileage rate that is set under s. 20.916 (8). The  
14 amount of the maximum hourly reimbursement for court interpreters shall be as  
15 follows:

16           1. Forty dollars for the first hour and \$20 for each additional 0.5 hour for  
17 qualified interpreters certified under the requirements and procedures approved by  
18 the supreme court.

19           2. Thirty dollars for the first hour and \$15 for each additional 0.5 hour for  
20 qualified interpreters, as defined in s. 885.38 (1) (c).

21           (b) To receive reimbursement under par. (a), a county must submit, on forms  
22 provided by the director of state courts, an accounting of the amount paid for  
23 expenses related to court interpreters that are eligible for reimbursement under par.  
24 (a). The forms must include expenses for the preceding 3-month period and must  
25 be submitted within 90 days after that 3-month period has ended. The director of

✓  
Insert  
3-9  
→

1 state courts may not reimburse a county for any expenses related to court  
2 interpreters that are submitted after the 90-day period has ended. If moneys are  
3 insufficient to pay the full reimbursement to the counties, the director of state courts  
4 may prorate the payments. Reimbursement under par. (a) first applies to court  
5 interpreter expenses incurred on the effective date of this paragraph .... [revisor  
6 inserts date].

7 (c) The director of state courts shall annually adjust the maximum hourly  
8 reimbursement to counties for fees paid for court interpreters under par. (a) to reflect  
9 the changes in the consumer price index for all urban consumers, U.S. city average,  
10 as determined by the U.S. department of labor, with the adjusted limit to apply to  
11 interpreter services provided subsequent to the adjustments.

12 **SECTION 4.** 814.67 (1) (am) of the statutes is created to read:

13 814.67 (1) (am) For witnesses attending before a circuit court, \$16 per day.

14 **SECTION 5.** 814.67 (1) (b) (intro.) of the statutes is amended to read:

15 814.67 (1) (b) (intro.) For attending before ~~any other court~~ the court of appeals  
16 or the supreme court:

17 **SECTION 6.** 814.67 (1) (b) 2. of the statutes is amended to read:

18 814.67 (1) (b) 2. For interpreters, ~~\$35 per one-half day~~ a fee determined by the  
19 supreme court.

20 **SECTION 7.** 814.67 (1) (c) of the statutes is amended to read:

21 814.67 (1) (c) For traveling, at the ~~rate of 20 cents~~ mileage rate equal to the rate  
22 that is set under s. 20.916 (8), per mile going and returning from his or her residence  
23 if within the state; or, if without the state, from the point where he or she crosses the  
24 state boundary to the place of attendance, and returning by the usually traveled  
25 route between such points.

1           **SECTION 8.** 885.37 (title) of the statutes is amended to read:

2           **885.37** (title) ~~Interpreters for persons with language difficulties or~~  
3 ~~hearing or speaking impairments in municipal courts and administrative~~  
4 ~~agency contested cases.~~

5           **SECTION 9.** 885.37 (1) (a) of the statutes is repealed.

6           **SECTION 10.** 885.37 (1) (b) of the statutes is amended to read:

7           885.37 (1) (b) If a municipal court has notice that a person ~~who fits any of the~~  
8 ~~criteria under par. (a)~~ has a language difficulty because of the inability to speak or  
9 understand English, has a hearing impairment, is unable to speak or has a speech  
10 defect, the court shall make a factual determination of whether the language  
11 difficulty or the hearing or speaking impairment is sufficient to prevent the  
12 individual from communicating with his or her attorney, reasonably understanding  
13 the English testimony or reasonably being understood in English. If the court  
14 determines that an interpreter is necessary, the court shall advise the person that  
15 he or she has a right to a qualified interpreter and that, if the person cannot afford  
16 one, an interpreter will be provided for him or her at the public's expense. Any waiver  
17 of the right to an interpreter is effective only if made voluntarily in person, in open  
18 court and on the record.

19           **SECTION 11.** 885.37 (2) of the statutes is repealed.

20           **SECTION 12.** 885.37 (4) (a) of the statutes is repealed and recreated to read:

21           885.37 (4) (a) The necessary expense of furnishing an interpreter for an  
22 indigent person in a municipal court shall be paid by the municipality.

23           **SECTION 13.** 885.37 (5) (a) of the statutes is amended to read:

1           885.37 (5) (a) If a court under sub. (1) ~~or (2)~~ or an agency under sub. (3) decides  
2 to appoint an interpreter, the court or agency shall follow the applicable procedure  
3 under par. (b) or (c).

4           **SECTION 14.** 885.38 of the statutes is created to read:

5           **885.38 Interpreters in circuit and appellate courts.** (1) In this section:

6           (a) "Court proceeding" means any proceeding before a court of record.

7           (b) "Limited English proficiency" means any of the following:

8           1. The inability, because of the use of a language other than English, to  
9 adequately understand or communicate effectively in English in a court proceeding.

10           2. The inability, due to a speech impairment, hearing loss, deafness,  
11 deaf-blindness, or other disability, to adequately hear, understand, or communicate  
12 effectively in English in a court proceeding.

13           (c) "Qualified interpreter" means a person ~~whom the court has found~~ <sup>who</sup> is readily  
14 and accurately able to communicate with ~~the~~ <sup>an</sup> individual ~~with~~ <sup>who has</sup> limited English  
15 proficiency, to explain the meaning of the court-related proceedings in  
16 understandable terms to that individual, and to repeat the statements of that person  
17 to the court in English.

18           (2) The supreme court shall establish the procedures and policies for the  
19 recruitment, training, and certification of persons to act as qualified interpreters in  
20 a court proceeding and for the coordination, discipline, retention, and training of  
21 those interpreters.

22           (3) (a) The court shall appoint a qualified interpreter for a person in a court  
23 proceeding if the court determines that the person has limited English proficiency  
24 and the person is one of the following:

25           1. A party in interest.

↓ -  
insert  
6-17  
=

Handwritten scribble



(1) 2. A witness, while testifying in a court proceeding

2 3. An alleged victim, as defined in s. 950.02 (4).

3 4. A parent or legal guardian of a minor party in interest or the legal guardian  
4 of a party in interest.

5 (b) The court may appoint more than one qualified interpreter in a court  
6 proceeding when necessary.

7 (c) If a person with limited English proficiency, as defined in sub. (1) (b) 2., is  
8 part of a jury panel in a court proceeding, the court shall appoint a qualified  
9 interpreter for that person.

10 (d) If a person with limited English proficiency requests the assistance of the  
11 clerk of circuit courts regarding a legal proceeding, the clerk may provide the  
12 assistance of a qualified interpreter to respond to the person's inquiry.

13 (e) A qualified interpreter appointed under this subsection may, with the  
14 approval of the court, provide interpreter services outside the court room that are  
15 related to the court proceedings, including during court-ordered psychiatric or  
16 medical exams or mediation.

17 (f) A qualified interpreter shall be appointed or provided under this subsection  
18 without regard to the ability of the person with limited English proficiency to pay for  
19 the costs of the qualified interpreter.

20 (4) (a) A person with limited English proficiency may waive the right to a  
21 qualified interpreter at any point in a court proceeding if the court determines on the  
22 record, <sup>the</sup> in open court, <sup>knowingly, intelligently and</sup> that the waiver has been made voluntarily.

23 (b) At any point in the court proceeding, for good cause, the person with limited  
24 English proficiency may retract his or her waiver and request that a qualified  
25 interpreter be appointed.

*advises the person of the nature and effect of the waiver and*

1 (5) Every qualified interpreter, before commencing his or her duties in a court  
2 proceeding, shall take a sworn oath that he or she will make a true and impartial  
3 interpretation. The supreme court may approve a uniform oath for qualified  
4 interpreters.

5 (6) Any party to a court proceeding may object to the use of any qualified  
6 interpreter for good cause. The court may remove a qualified interpreter for good  
7 cause.

8 (8) (a) Except as provided in par. (b), the necessary expenses of providing  
9 qualified interpreters to persons with limited English proficiency under this section  
10 shall be paid as follows:

11 1. The county in which the circuit court is located shall pay the expenses in all  
12 proceedings before a circuit court and when the clerk of circuit court uses a qualified  
13 interpreter under sub. (3) (d).

14 2. The court of appeals shall pay the expenses in all proceedings before the court  
15 of appeals.

16 3. The supreme court shall pay the expenses in all proceedings before the  
17 supreme court.

18 (b) The state public defender shall pay the expenses for interpreters assisting  
19 the state public defender in representing an indigent person in preparing for court  
20 proceedings.

21 (c) The county shall be reimbursed as provided in s. 758.19 (8) for expenses paid  
22 under par. (a) of this subdivision.

23 **SECTION 15.** 905.015 of the statutes is amended to read:

24 **905.015 Interpreters for persons with language difficulties, limited**  
25 **English proficiency, or hearing or speaking impairments.** If an interpreter

1 for a person with a language difficulty, limited English proficiency, as defined in s.  
 2 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a  
 3 communication which is privileged by statute, rules adopted by the supreme court,  
 4 or the U.S. or state constitution, the interpreter may be prevented from disclosing  
 5 the communication by any person who has a right to claim the privilege. The  
 6 interpreter may claim the privilege but only on behalf of the person who has the  
 7 right. The authority of the interpreter to do so is presumed in the absence of evidence  
 8 to the contrary.

9 **SECTION 9309. Initial applicability; circuit courts.**

10 (1) COURT INTERPRETERS. The treatment of sections 20.625 (1) (c), 46.295 (2) (c),  
 11 <sup>48.315 (1) (h), 48.375 (1) (d) (m),</sup> 758.19 (8), 814.67 (1) (am), (b) (intro.) and 2., and (c), 885.37 (title), (1) (a) and (b), (2),  
 12 (4) (a), and (5) (a), 885.38, <sup>and 938.315 (1) (h)</sup> ~~and~~ 905.015 of the statutes first applies to interpreters  
 13 used by a clerk of court or appointed by a court on the effective date of this subsection.

14 **SECTION 9409. Effective dates; circuit courts.**

15 (1) COURT INTERPRETERS. The treatment of sections 20.625 (1) (c), 46.295 (2) (c),  
 16 758.19 (8), 814.67 (1) (am), (b) (intro.) and 2., and (c), 885.37 (title), (1) (a) and (b), (2),  
 17 (4) (a), and (5) (a), 885.38, ~~and~~ 905.015 of the statutes takes effect on April 1, 2002.

18 (END)

✓  
insert  
8-8

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0094/3ins  
RPN:kmg:rs

1 insert 3-7:

2 **SECTION 1.** 48.315 (1) (h) of the statutes is created to read:

3 48.315 (1) (h) Any period of delay resulting from the need to appoint a qualified  
4 interpreter.

5 **SECTION 2.** 48.375 (7) (d) 1m. of the statutes is amended to read:

6 48.375 (7) (d) 1m. Except as provided under s. 48.315 (1) (b), (c) and, (f), and  
7 (h), if the court fails to comply with the time limits specified under subd. 1. without  
8 the prior consent of the minor and the minor's counsel, if any, or the member of the  
9 clergy who filed the petition on behalf of the minor, if any, the minor and the minor's  
10 counsel, if any, or the member of the clergy, if any, shall select a temporary reserve  
11 judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and  
12 issue an order granting or denying the petition and the chief judge of the judicial  
13 administrative district in which the court is located shall assign the temporary  
14 reserve judge selected by the minor and the minor's counsel, if any, or the member  
15 of the clergy, if any, to make the determination and issue the order. A temporary  
16 reserve judge assigned under this subdivision to make a determination under par.  
17 (c) and issue an order granting or denying a petition shall make the determination  
18 and issue the order within 2 calendar days after the assignment, unless the minor  
19 and her counsel, if any, or the member of the clergy who filed the petition on behalf  
20 of the minor, if any, consent to an extension of that time period. The order shall be  
21 effective immediately. The court shall prepare and file with the clerk of court  
22 findings of fact, conclusions of law and a final order granting or denying the petition,  
23 and shall notify the minor of the court's order, as provided under subd. 1.

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insert 6-17:

*Not* is able to do all of the following:

*and* ~~and~~

- 1. Readily communicate with a person who has limited English proficiency.
- 2. Orally transfer the meaning of statements to ~~an~~ from English and the language spoken by a person who has limited English proficiency in the context of a court proceeding.
- 3. Readily and accurately interpret for a person who has limited English proficiency, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary.

insert 8-7:

(7) The delay resulting from the need to locate and appoint a qualified interpreter may constitute good cause for the court to toll the time limitations in the court proceeding.

insert 9-8:

**SECTION 3.** 938.315 (1) (h) of the statutes is created to read:  
938.315 (1) (h) Any period of delay resulting from the need to appoint a qualified interpreter.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0094/3dn  
RPN:kmg:pg

November 9, 2000

Brett Coomber:

I made changes in the draft based on the memo that I received from Marcia Vandercook. Paragraphs 1. through 4. of her memo do not appear to require any change in the draft.

The language suggested in paragraph 5. does not quite fit in a definition statute, so I reworded it to fit a definition. Please review new s. 885.38 (1) (c) to see if I captured the intent.

I made the changes suggested in paragraphs 6. and 7.

Although Marcia was not sure if the change should be made as suggested in paragraph 8., I did make the changes necessary to show what is involved. We can remove those sections if necessary. See new ss. 48.315 (1) (h), 48.375 (7) (d) 1m., 885.38 (7), and 938.315 (1) (h). The only "problem" with these changes is the necessity to make a change in s. 48.375 (7) (d) 1m., which is part of the section dealing with a minor's petition to obtain an abortion.

I did not make the change as suggested in paragraph 9., but I did move the language from par. (c) of s. 885.38 (8) [formerly s. 885.38 (7)] to par. (a) 1. of s. 885.38 (8).

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
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# The Americans with Disabilities Act of 1990

## What is the purpose of the Americans with Disabilities Act (ADA)?

The ADA, signed into law July 26, 1990, bans discrimination based on disability. It gives individuals with disabilities civil rights protections like those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunication relay services.

## Why is the ADA needed?

The Civil Rights Act of 1964 does not cover people with disabilities. Until passage of the ADA, federal protections against discrimination based on a person's disability were scattered and very limited. Congress concluded that discrimination existed against people with disabilities, and they were sometimes denied equal, effective and meaningful opportunities to participate in society.

## How is disability defined by the ADA?

The ADA defines disability to mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual, having a record of such an impairment, or being regarded as having such an impairment. This is the same definition included in section 504 of the Rehabilitation Act of 1973, the Fair Housing Act Amendments and the Air Carrier Access Act.

## What does the ADA cover?

Highlights of the requirements for each section of the law are as follows:

### Employment

- Employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.
- Employers can ask about one's ability to perform a job, but cannot inquire if someone has a disability or subject a person to tests that tend to screen out people with disabilities.
- Employers will need to provide "reasonable accommodation" to individuals with disabilities if needed. This includes steps such as job restructuring and modification of equipment.
- Employers do not need to provide accommodations that impose an "undue hardship" on business operations.

### Transportation

- New public transit buses and rail cars ordered after Aug. 26, 1990, must be accessible to individuals with disabilities.
- Transit authorities must provide comparable paratransit or other special transportation services to individuals with disabilities who cannot use fixed route bus services, unless an undue burden would result.
- Existing rail systems must have one accessible car per train by July 26, 1995.
- New bus and train stations must be accessible.
- Key stations in rapid, light and commuter rail systems must be made accessible by July 26, 1993,

with extensions up to 20 years for commuter rail (30 years for rapid and light rail).

- All existing Amtrak stations must be accessible by July 26, 2010.

### **State and Local Government Services**

- State and local governments may not discriminate against qualified individuals with disabilities.
- All government facilities, services, and communications must be accessible consistent with the requirements of section 504 of the Rehabilitation Act of 1973.

### **Public Accommodations**

- Private entities such as restaurants, hotels and retail stores may not discriminate against individuals with disabilities, effective Jan. 26, 1992.
- Reasonable modifications must be made to policies, practices or procedures to avoid discriminating unless a fundamental alteration to the nature of the goods or services would result.
- Auxiliary aids and services must be provided to ensure effective communication with individuals with disabilities that substantially limit the ability to communicate--such as vision, hearing or speech impairments--unless an undue burden or a fundamental alteration would result.
- Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered, if they are readily achievable.
- All new construction and alterations of facilities must be accessible.

### **Telecommunications**

- Companies offering telephone service to the general public must offer telephone relay services to allow communications access for people with speech and hearing impairments who cannot use telephones.

### **How extensive are the changes required?**

The law does not impose unlimited requirements on employers, state and local government or public accommodations. The ADA adopts a reasonable compromise to give people with disabilities access to everyday life without placing an undue burden on American enterprises. For example, there are minimal requirements for retrofitting existing facilities. Physical barriers need only be removed when the task can be accomplished without much difficulty or expense.

### **When did the law take effect?**

#### **Employment**

- July 26, 1992, for employers with 25 or more employees.
- July 26, 1994, for employers with 15-24 employees.

#### **Transportation**

- Aug. 26, 1990, for purchase or lease of new buses or rail and for privately operated bus and van companies.
- Various dates for other actions related to transportation accessibility.

### **State and Local Government Services**



- Jan. 26, 1992.

### **Public Accommodations**

- Jan. 26, 1992, generally.
- Jan. 26, 1993, for new construction.

### **Telecommunications**

- July 26, 1993, for provision of relay services.

### **If discrimination exists, what can a person do?**

An individual who needs to file a complaint can do so with the following agencies depending on the activity which was discriminatory.

### **Employment**

Complaints may be filed with the Equal Employment Opportunity Commission. Available remedies include back pay and court orders to stop discrimination.

Individuals may bring private lawsuits to obtain court orders to stop discrimination, but money damages cannot be awarded. Individuals can also file complaints with the Attorney General who may file lawsuits to stop discrimination and obtain money damages and penalties.

### **Transportation**

For public bus and rail systems, individuals may file complaints with the Department of Transportation or bring private lawsuits. For privately operated bus and van companies, individuals may file complaints with the Attorney General or bring private lawsuits under the public accommodations procedures.

### **State and Local Government Services**

Individuals may file complaints with the U. S. Department of Justice or other designated federal agencies, or bring private lawsuits.

### **Public Accommodations**

Individuals may file complaints with the U. S. Department of Justice or bring private lawsuits.

### **Telecommunications**

Individuals may file complaints with the Federal Communications Commission.

### **What specifically does the ADA require for people with mental retardation?**

People with mental retardation are among the covered classes of individuals with disabilities under ADA. There are, however, no specific provisions aimed solely at individuals with mental retardation. Yet, each of the ADA's provisions is available to them. Access to jobs, transportation and public places such as movie theaters, restaurants and stores are each important to achieve full participation in our

society. Children and adults with mental retardation cannot be denied access to private day care on the basis of their disability. No longer can anyone deny participation in any of these life activities to a qualified individual with mental retardation.

### **What can chapters of The Arc do to help implement the ADA?**

Many business owners are wary of the impact of the ADA on their businesses. It is important that they fully understand their responsibilities under the ADA and implement whatever steps are necessary to allow access to their places of business. In addition to the specific ADA provisions, they also need to learn more about the strengths and limitations and needs of people with mental retardation.

Here are some ideas of how chapters of The Arc and members can assist in making the ADA a reality in your community:

- Make known your availability to provide technical assistance in your community on how to comply with ADA.
- Concentrate on those provisions central to allowing access for people with mental retardation. For example, many individuals with mental retardation do not need special lifts to use public transportation. They might, however, need special assistance from bus drivers in embarking on the right bus and disembarking at the correct location. Bus driver training programs are often essential to successful bus transportation for many people with mental retardation. Another example would be employment-related training for businesses who could be potential employers of workers with mental retardation.
- Point out access needs or other ADA issues to businesses who may not be aware that they may be in violation.
- Work closely with other disability groups who are also undertaking ADA implementation strategies.
- Communicate regularly with your state and local government officials, especially the designated ADA coordinators, to be sure all facilities and services are in compliance with the ADA.

### **Where can I go to get more information about the law?**

The Arc has developed ADA materials specific to people with mental retardation and related disabilities. You can receive more information on these materials by contacting The Arc at the address or phone number listed on the front of this Q&A. You can also obtain ADA information and technical assistance by contacting the agencies below.

U. S. Department of Justice  
Public Access Section  
Civil Rights Division  
P. O. Box 66738  
Washington, D.C. 20035-6738  
(202) 514-0301 Voice, (202) 514-0383 TDD  
(202) 514-6193 Electronic Bulletin Board

Equal Employment Opportunity Commission  
1801 L Street, N.W.  
Washington, D.C. 20507  
1-800-4400 to file a charge  
1-800-669-EEOC Publications & Referrals

1-800-800-3302 TDD

U.S. Department of Transportation  
400 7th Street, S.W., Room 10424  
Washington, D.C. 20590  
(202) 366-9305 Voice  
(202) 755-7687 TDD

Access Board  
1331 F St., NW, Suite 1000  
Washington, D.C. 20004-1111  
(202) 872-2253 Voice and TDD  
1-800-993-2822 TDD

#101-24

Revised June 1995

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*The Arc  
National Headquarters  
1010 Wayne Ave. Suite 650  
Silver spring, MD  
301/565-3842  
301/565-5342 (fax)  
[info@thearc.org](mailto:info@thearc.org) (e-mail)*

[Return](#) to The Arc's Q&A Page.

[Return](#) to The Arc's Home Page.

Jim Johnston - - Brett C.

8:30 - 6-8270  
6-3420

NS

Technical college system  
cooperate w/ Sup of  
to. re: to training &  
testing of persons to  
act as qualified interpreters

Change Requester  
Form

905.015

**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.

905.015 - ANNOT.

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

906.04

**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.

906.04 - ANNOT.

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

967.06

**967.06 Determination of indigency; appointment of counsel; preparation of record.** As soon as practicable after a person has been detained or arrested in connection with any offense which is punishable by incarceration, or in connection with any civil commitment proceeding, or in any other situation in which a person is entitled to counsel regardless of ability to pay under the constitution or laws of the United States or this state, the person shall be informed of his or her right to counsel. Persons who indicate at any time that they wish to be represented by a lawyer, and who claim that they are not able to pay in full for a lawyer's services, shall immediately be permitted to contact the authority for indigency determinations specified under s. 977.07 (1). The authority for indigency determination in each county shall have daily telephone access to the county jail in order to identify all persons who are being held in the jail. The jail personnel shall provide by phone information requested by the authority. In any case in which the state public defender provides representation to an indigent person, the public defender may request that the applicable court reporter or clerk of circuit court prepare and transmit any transcript or court record. The request shall be complied with. The state public defender shall, from the appropriation under s. 20.550 (1) (f), compensate the court reporter or clerk of circuit court for the cost of preparing, handling, duplicating and mailing the documents.

967.06 - ANNOT.

**History:** *Sup. Ct. Order, 71 Wis. 2d ix (1975); 1977 c. 29, 418; 1979 c. 356; 1981 c. 20; 1983 a. 377; 1993 a. 16.*

967.06 - ANNOT.

*The defendant was entitled to court-appointed counsel in a state-initiated civil contempt action. Brotzman v. Brotzman, 91 Wis. 2d 335, 283 N.W.2d 600 (Ct. App. 1979).*

967.06 - ANNOT.

*This section gives the public defender the right to receive juvenile records of indigent clients notwithstanding 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 329 N.W.2d 275 (Ct. App. 1982).*

967.06 - ANNOT.

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

967.06 - ANNOT.

*Police had no duty to inform a suspect during custodial interrogation that a lawyer retained by suspect's family was present. State v. Hanson, 136 Wis. 2d 195, 401 N.W.2d 771 (1987).*

967.06 - ANNOT.

*The county must provide free transcripts to the state public defender. State v. Dresel, 136 Wis. 2d 461, 401 N.W.2d 855 (Ct. App. 1987).*

967.06 - ANNOT.

*A public defender appointed as postconviction counsel is entitled to all court records including the presentence investigation report; access may not be restricted under s. 972.15 (4). Oliver v. Goulee, 179 Wis. 2d 376, 507 N.W.2d 145 (Ct. App. 1993).*

967.06 - ANNOT.

*The state public defender may be denied access to jail inmates who have not requested counsel, and jail authorities need only provide over the telephone that information necessary for the public defender to assess the need to make an indigency determination in person under s. 977.07 (1) for an inmate who has requested counsel and claims indigency. WAC sec. SPD 2.03 (3) and (5) (July, 1990) exceed the bounds of this section. 78 Atty. Gen. 133.*

967.09

**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.

967.09 - ANNOT.

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

971.04

**971.04 Defendant to be present.**

971.04(1)

(1) (intro.) Except as provided in subs. (2) and (3), the defendant shall be present:

971.04(1)(a)

(a) At the arraignment;

971.04(1)(b)

(h) At trial;

971.04(1)(c)

(c) During voir dire of the trial jury;

971.04(1)(d)

(d) At any evidentiary hearing;

971.04(1)(e)

(e) At any view by the jury;

971.04(1)(f)

(f) When the jury returns its verdict;

971.04(1)(g)

(g) At the pronouncement of judgment and the imposition of sentence;

971.04(1)(h)

(h) At any other proceeding when ordered by the court.

971.04(2)

(2) A defendant charged with a misdemeanor may authorize his or her attorney in writing to act on his or her behalf in any manner, with leave of the court, and be excused from attendance at any or all proceedings.

971.04(3)

(3) If the defendant is present at the beginning of the trial and thereafter, during the progress of the trial or before the verdict of the jury has been returned into court, voluntarily absents himself or herself from the presence of the court without leave of the court, the trial or return of verdict of the jury in the case shall not thereby be postponed or delayed, but the trial or submission of said case to the jury for verdict and the return of verdict thereon, if required, shall proceed in all respects as though the defendant were present in court at all times. A defendant need not be present at the pronouncement or entry of an order granting or denying relief under s. 974.02 or 974.06. If the defendant is not present, the time for appeal from any order under ss. 974.02 and 974.06 shall commence after a copy has been served upon the attorney representing the defendant, or upon the defendant if he or she appeared without counsel. Service of such an order shall be complete upon mailing. A defendant appearing without counsel shall supply the court with his or her current mailing address. If the defendant fails to supply the court with a current and accurate mailing address, failure to receive a copy of the order granting or denying relief shall not be a ground for tolling the time in which an appeal must be taken.

971.04 - ANNOT.

**History:** 1971 c. 298; *Sup. Ct. Order, 130 Wis. 2d xix (1986)*; 1993 a. 486; *Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997)*.

971.04 - ANNOT.

**Judicial Council Note, 1996:** *This statute [sub. (1) (c)] defines the proceedings at which a criminal*

*defendant has the right to be present. The prior statute's [sub. (1) (c)] reference to "all proceedings when the jury is being selected" was probably intended to include only those at which the jurors themselves were present, not the selection of names from lists which occurs at several stages before the defendant is charged or the trial jury picked. [Re Order effective 1-1-97]*

971.04 - ANNOT.

*The court erred in resentencing the defendant without notice after imposition of a previously ordered invalid sentence. State v. Upchurch, 101 Wis. 2d 329, 305 N.W.2d 57 (1981).*

971.04 - ANNOT.

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

971.04 - ANNOT.

*Sub. (2) allows entry of plea to a misdemeanor by an attorney without the defendant being present, but for a guilty or no contest plea all requirements of s. 971.08, except attendance must be met. State v. Krause, 161 Wis. 2d 919, 469 N.W.2d 241 (Ct. App. 1991).*

971.04 - ANNOT.

*Sub. (1) does not encompass a postconviction evidentiary hearing. State v. Vennemann, 180 Wis. 2d 81, 508 N.W.2d 404 (1993).*

971.04 - ANNOT.

*A defendant present at the beginning of jury selection is not "present at the beginning of the trial" under sub. (3). State v. Dwyer, 181 Wis. 2d 826, 512 N.W.2d 533 (Ct. App. 1994).*

971.04 - ANNOT.

*A defendant's presence is required during all proceedings when the jury is being selected, including in camera voir dire. However, failure to allow the the defendant's presence may be harmless error. State v. David J.K. 190 Wis. 2d 726, 528 N.W.2d 434 (Ct. App. 1994).*

971.04 - ANNOT.

*A trial begins under sub. (3) occurs when jeopardy attaches, which is when the jury is sworn. State v. Miller, 197 Wis. 2d 518, 541 N.W.2d 153 (Ct. App. 1995).*

971.04 - ANNOT.

*An accused has the right to be present at trial, but the right may be waived by misconduct or consent. A formal on-the-record waiver is favored, but not required. State v. Divanovic, 200 Wis. 2d 210, 546 N.W.2d 501 (Ct. App. 1996).*

971.04 - ANNOT.

*A defendant may not be sentenced in absentia. The right to be present for sentencing may not be waived. State v. Koopmans, 210 Wis. 2d 671, 563 N.W.2d 528 (1997).*



971.04 - ANNOT.

*Koopmans does not require rejecting the harmless error test for all violations of this section. State v. Peterson, 220 Wis. 2d 474, 584 N.W.2d 144 (Ct. App. 1998).*

971.04 - ANNOT.

*Deprivation of the right to be present and to have counsel present at jury selection is subject to a harmless error analysis; there is a thin line between when reversal is warranted and when it is not. That a juror's subjective bias is generally ascertained by that person's responses at voir dire and that the interplay between potential jurors and a defendant is both immediate and continuous are factors that weigh against finding harmless error. State v. Harris, 229 Wis. 2d 832, 601 N.W.2d 682 (Ct. App. 1999).*

# State of Wisconsin

## Revisor of Statutes Bureau

131 W. Wilson Street, Suite 800  
Madison, WI 53703-3233

Phone: (608) 266-2011  
Fax: (608) 264-6978

### Fax Cover Sheet

Date: December 1, 2000 Fax #: 264-6948

To: Mr. Bob Nelson (per To: list on letter)

From: Revisor of Statutes Bureau

Number of pages including cover sheet: 16 pages

#### Message:

Your fax number has only one digit difference from our fax number.

The following fax was received at our fax machine today and is being

faxed forward to your number since it is the likeliest candidate to

be the one the sender intended to reach.

*V-M - Jim Johnson Put this off  
for a while. Not DDA high  
priority.*

To: Jim Johnston & Brett Coomber at fax # 267-0372  
Bob Nelson at fax # 264-6948  
David Suchman  
From: Marcia Vandercook  
Date: December 1, 2000  
Re: Court interpreter statutes (LRB-0094/3dn)

The court interpreter committee has discussed the latest draft of the bill and would like to request the following changes.

1) The analysis, although not official, has a couple of things that should be corrected. The first sentence of page 1, paragraph 2, says "currently, the expense of furnishing an interpreter in the supreme court, court of appeals, or circuit court is paid by the director of state courts." In fact, interpreters in the supreme court and court of appeals are paid from the budgets of those courts. In the circuit courts, the counties pay for interpreters and are partially reimbursed by the director's office in an amount set by statute. I think it's important for this to be explained clearly, so that everyone understands it is the reimbursement amount we are legislating, not the amount an interpreter may be paid.

*But that is not current law!*

2) Page 2, second full paragraph, last sentence, says that "if state moneys are insufficient to fully reimburse the counties, the director of state courts must prorate the reimbursements." This should read "may" prorate the reimbursements, with the understanding that it will still be possible to request additional funds under sec. 13.101.

3) Page 4, line 11, says "the director of state courts shall reimburse counties 4 times per year." This should be changed to "up to 4 times", since some smaller counties won't have expenses in a given quarter and shouldn't be made to fill out the paperwork.

*??*

4) Page 5, line 8 says that "the director of state courts shall annually adjust the maximum hourly reimbursement ... to reflect the changes in the consumer price index...." We would like to add a set date for making the annual adjustment each year, such as "beginning July 1, 2003."

*✓*

5) Page 5, line 22: the committee believes that the time an interpreter spends immediately before and after a court proceeding can be paid by the clerk of court and reimbursed by the state. Interpreters should be encouraged to arrive at the courtroom long enough before the hearing to review the court file (to learn names, addresses, sequence of events, etc., thus improving the accuracy of the interpretation) and to talk with the limited English proficiency person (to make sure communication is established and that there are no dialect problems). After the hearing, interpreters are often asked to go with parties to help them post bond, pay fines, set up appointments, etc. These types of tasks directly serve the interest of the court, so they are properly included in the interpreter's bill to the court and reimbursed by the state. If a call or visit to a non-court agency turns into a consultation, the interpreter should then bill the agency for the additional time.

The committee wants to be sure that the current draft will allow reimbursement in these situations. Sec. 814.67(2) has not been changed from current law and says "a witness or

interpreter is entitled to fees only for the time he or she is in necessary and actual attendance as such..." New 885.38(1)(a) defines "court proceedings" as "any proceeding before any court of record." New 885.38(3)(c) says "a qualified interpreter appointed under this subsection may, with the approval of the court, provide interpreter services outside the court room that are related to the court proceedings, including during court-ordered psychiatric or medical exams or mediation." Bob Nelson and I have discussed these provisions and think that they will allow reimbursement for court-related pretrial and posttrial interpreting, so we will leave them as is.

6) Page 6, lines 4 to page 7, line 3, revisions to sec. 885.37: the goal of these revisions was to move circuit court interpreters into new 885.38, while leaving the law on municipal court interpreters and executive agency interpreters as is. However, the current revisions have the effect of requiring municipal courts to provide interpreters in all types of cases, which was not the committee's intent. After talking with Ronni Jones, who works for Judicial Education training and advising the municipal court judges, we came up with the suggested language attached. This should preserve the status quo until the committee can discuss the issue with the municipal judges during its second year.

7) Page 8, after line 8: the committee would like to add a catch-all provision to the list of persons entitled to an interpreter under the statute. The current statute has a catch-all provision that gives judges the discretion to appoint interpreters in other types of proceedings besides criminal, juvenile, and mental health proceedings. We eliminated this provision when we decided to cover all types of proceedings. The old statute also limited the persons entitled, which we have continued; our bill proposes to cover parties, witnesses while testifying, victims, parents of minors, and legal guardians.

Since the first draft, several situations have come to the committee's attention that suggest there should be room for judges to appoint an interpreter in other limited circumstances. A misdemeanor clerk called last week to ask if an interpreter should be appointed for the parents of an 18-year-old still living at home. Certainly in this situation the judge would want the parents to understand the offense, conditions of probation, fine, loss of license, etc. The same need to know may sometimes apply to the defendant's spouse, employer, or bond guarantor. In family cases, non-party family members are often part of the problem or part of the solution. Sometimes there is a caretaker in a child's life who is neither a parent nor a legal guardian, but who is the responsible person nonetheless. The committee requests that a new section be added, 885.38(3)(a)5., to include "another person affected by the action, as deemed necessary and appropriate by the court." The committee will be writing guidance for the courts on how to implement the statute, and these examples can be included.

8) The committee wants to stay with a simplified provision for waiving an interpreter, but it didn't like my suggested language. Page 8, line 24, now says that "a person with limited English proficiency may waive the right to a qualified interpreter at any point in the court proceeding" if the court properly advises the person and makes certain findings on the record. The committee felt that this language makes waiver a personal right which would allow the person to waive the interpreter even over the objection of the court. This runs counter to the underlying premise that the interpreter is present to protect the integrity of the court proceedings as well as to protect the rights of the party. The committee would like to change this provision so that the court has the

discretion not to accept the waiver. I have suggested some language but will defer to Bob on how best to phrase it.

9) Page 8, line 13: as we requested, this draft includes a provision saying that the need to find a qualified interpreter may constitute good cause for tolling statutory time limits. Bob believes that associated changes to chapter 48 (found at page 3, line 8 to page 4, line 4) are necessary for correct drafting, to make amendments wherever they are required to effectuate the tolling provision. We have decided to leave these provisions in.

Thank you. We appreciate your consideration of these requests.

2001 - 2002 LEGISLATURE

LRB-0094/3  
RPN:kmg:pg

DOA:.....Coomber - Court interpreters

FOR 2001-03 BUDGET -- NOT READY FOR INTRODUCTION

*MV changes -  
see memo of 12/1/00*

1 AN ACT ... relating to: providing court interpreters for persons with limited  
2 ability to speak or understand the English language and making an  
3 appropriation.

**Analysis by the Legislative Reference Bureau  
COURTS AND PROCEDURE**

*to an indigent person*

**CIRCUIT COURTS**

Under current law, if a court knows that a person charged with a crime, a parent or child subject to juvenile court proceedings, a person subject to mental health or protective service proceedings, or a witness to one of those proceedings, is unable to communicate and understand English because of a language difficulty or a disability, the court is required to tell the person that he or she has the right to an interpreter. If the person cannot afford to pay for an interpreter, current law requires the court to provide an interpreter at the public's expense. Current law allows courts to authorize the use of interpreters in other court proceedings. Administrative agencies are also authorized under current law to use interpreters in contested cases.

Currently, the expenses of furnishing an interpreter in the supreme court, court of appeals, or circuit court is paid by the director of state courts. If the state public defender needs an interpreter to assist in preparing an indigent for a court proceedings, current law requires the state public defender to pay the expenses. In municipal court and before administrative agencies, the unit of government involved

*In the circuit courts, the counties pay for interpreters and are partially reimbursed by the director of state courts office in an amount set by statute. at the rate of \$16 per day*

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is required to pay the interpreter expenses. Current law limits the amount of fees for interpreters before a municipal court or an agency to \$10 per 0.5 day or higher fees established by the unit of government and \$35 per 0.5 day before a court of record or when assisting the state public defender. Current law also requires the payment of mileage at the rate of 20 cents per mile.

Under this bill, the current law remains unchanged for interpreters at a municipal court or an agency proceeding and when assisting the public defender. Under the bill, if a person who is unable to understand or communicate in English due to a disability or because of his or her use of a language other than English is involved in a proceeding before a circuit court, court of appeals or supreme court, that court is required to appoint an interpreter for the person. The interpreter must be able to readily communicate with the person, transfer the meaning of statements to and from English in the court-related proceedings, and accurately interpret, in a manner that conserves the meaning, tone, and style of the original statement. Under the bill, if a person with limited English proficiency due to a disability is serving on a jury in a circuit court, the court must appoint an interpreter to assist the person. The bill also allows the clerk of court to provide an interpreter to assist a person with limited English proficiency when that person asks the court for assistance regarding a legal proceeding, such as how to bring an action to obtain a domestic abuse injunction. Interpreters are provided without charge under the bill without regard to the person's ability to pay for that interpreter's services.

Under the bill, the fee paid to an interpreter in the court of appeals or supreme court is determined by the supreme court. The expenses of providing an interpreter at the court of appeals or supreme court are paid by that court. If the interpreter is used at the circuit court level, the expenses of providing an interpreter at the circuit court are paid by the county. The bill requires the director of state courts to reimburse counties for expenses incurred in providing interpreters four times each year, at a rate of \$30 dollars for the first hour and \$15 for each additional 0.5 hour. If the interpreter is certified under requirements and procedures approved by the supreme court, the reimbursement rate under the bill is \$40 dollars for the first hour and \$20 for each additional 0.5 hour. The bill requires counties to submit reimbursement request forms within 90 days after each 3-month period has ended or lose reimbursement for that period. Under the bill, if state moneys are insufficient to fully reimburse the counties, the director of state courts ~~must~~ <sup>may</sup> prorate the reimbursements.

The bill allows a person with limited English proficiency to waive the appointment of an interpreter if the court determines on the record that the waiver has been made knowingly, intelligently, and voluntarily, and allows the person to retract that waiver at any time during the court proceedings for good cause. The bill establishes the mileage rate used for state employees as the mileage rate paid to interpreters.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 20.625 (1) (c) of the statutes is amended to read:

2 20.625 (1) (c) *Court interpreter fees.* The amounts in the schedule to pay  
3 interpreter fees ~~reimbursed~~ under s. ~~885.37 (4) (a) 2.~~ 758.19 (8).

4 SECTION 2. 46.295 (2) (c) of the statutes is amended to read:

5 46.295 (2) (c) ~~Legal services and civil court proceedings, excluding those~~  
6 ~~services covered under s. 885.38 for which reimbursement is provided under s.~~  
7 758.19 (8).

8 SECTION 3. 48.315 (1) (h) of the statutes is created to read:

9 48.315 (1) (h) Any period of delay resulting from the need to appoint a qualified  
10 interpreter.

11 SECTION 4. 48.375 (7) (d) 1m. of the statutes is amended to read:

12 48.375 (7) (d) 1m. Except as provided under s. 48.315 (1) (b), (c) and (f), and  
13 (h), if the court fails to comply with the time limits specified under subd. 1. without  
14 the prior consent of the minor and the minor's counsel, if any, or the member of the  
15 clergy who filed the petition on behalf of the minor, if any, the minor and the minor's  
16 counsel, if any, or the member of the clergy, if any, shall select a temporary reserve  
17 judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and  
18 issue an order granting or denying the petition and the chief judge of the judicial  
19 administrative district in which the court is located shall assign the temporary  
20 reserve judge selected by the minor and the minor's counsel, if any, or the member  
21 of the clergy, if any, to make the determination and issue the order. A temporary



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1 reserve judge assigned under this subdivision to make a determination under par.  
2 (c) and issue an order granting or denying a petition shall make the determination  
3 and issue the order within 2 calendar days after the assignment, unless the minor  
4 and her counsel, if any, or the member of the clergy who filed the petition on behalf  
5 of the minor, if any, consent to an extension of that time period. The order shall be  
6 effective immediately. The court shall prepare and file with the clerk of court  
7 findings of fact, conclusions of law and a final order granting or denying the petition,  
8 and shall notify the minor of the court's order, as provided under subd. 1.

9 SECTION 5. 758.19 (8) of the statutes is created to read:

10 758.19 (8) (a) From the appropriation under s. 20.625 (1) (c), the director of  
11 state courts shall reimburse counties <sup>up to</sup> 4 times each year for the actual expenses paid ✓  
12 for interpreters required by circuit courts to assist persons with limited English  
13 proficiency under s. 885.38 (8) (a) 1. The amount of the reimbursement for mileage  
14 shall be an amount equal to the mileage rate that is set under s. 20.916 (8). The  
15 amount of the maximum hourly reimbursement for court interpreters shall be as  
16 follows:

17 1. Forty dollars for the first hour and \$20 for each additional 0.5 hour for  
18 qualified interpreters certified under the requirements and procedures approved by  
19 the supreme court.

20 2. Thirty dollars for the first hour and \$15 for each additional 0.5 hour for  
21 qualified interpreters, as defined in s. 885.38 (1) (c).

22 (b) To receive reimbursement under par. (a), a county must submit, on forms  
23 provided by the director of state courts, an accounting of the amount paid for  
24 expenses related to court interpreters that are eligible for reimbursement under par.

25 (a). The forms must include expenses for the preceding 3-month period and must

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1 be submitted within 90 days after that 3-month period has ended. The director of  
2 state courts may not reimburse a county for any expenses related to court  
3 interpreters that are submitted after the 90-day period has ended. If moneys are  
4 insufficient to pay the full reimbursement to the counties, the director of state courts  
5 may prorate the payments. Reimbursement under par. (a) first applies to court  
6 interpreter expenses incurred on the effective date of this paragraph .... [revisor  
7 inserts date].

8 (c) The director of state courts shall annually adjust the maximum hourly  
9 reimbursement to counties for fees paid for court interpreters under par. (a) to reflect  
10 the changes in the consumer price index for all urban consumers, U.S. city average,  
11 as determined by the U.S. department of labor, with the adjusted limit to apply to  
12 interpreter services provided subsequent to the adjustments, beginning July 1, 2003.

13 SECTION 6. 814.67 (1) (am) of the statutes is created to read:

14 814.67 (1) (am) For witnesses attending before a circuit court, \$16 per day.

15 SECTION 7. 814.67 (1) (b) (intro.) of the statutes is amended to read:

16 814.67 (1) (b) (intro.) For attending before ~~any other court~~ the court of appeals  
17 or the supreme court:

18 SECTION 8. 814.67 (1) (b) 2. of the statutes is amended to read:

19 814.67 (1) (b) 2. For interpreters, ~~\$35 per one-half day~~ a fee determined by the  
20 supreme court.

21 SECTION 9. 814.67 (1) (c) of the statutes is amended to read:

22 814.67 (1) (c) For traveling, ~~at the rate of 20 cents~~ mileage rate equal to the rate  
23 that is set under s. 20.916 (8), per mile going and returning from his or her residence  
24 if within the state; or, if without the state, from the point where he or she crosses the

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1 state boundary to the place of attendance, and returning by the usually traveled  
2 route between such points.

3 SECTION 10. 885.37 (title) of the statutes is amended to read:

4 ~~885.37 (title) Interpreters for persons with language difficulties or~~  
5 ~~hearing or speaking impairments in municipal courts and administrative~~  
6 ~~agency contested cases.~~

7 SECTION 11. 885.37 (1) (a) of the statutes is ~~repealed~~ *repealed and recreated to read:*  
*(see attached*  
*885.37*

8 SECTION 12. 885.37 (1) (b) of the statutes is amended to read:

9 885.37 (1) (b) If a municipal court has notice that a person ~~who fits any of the~~ *leave in*  
10 ~~criteria under par (a)]~~ has a language difficulty because of the inability to speak or  
11 understand English, has a hearing impairment, is unable to speak or has a speech  
12 defect, the court shall make a factual determination of whether the language  
13 difficulty or the hearing or speaking impairment is sufficient to prevent the  
14 individual from communicating with his or her attorney, reasonably understanding  
15 the English testimony or reasonably being understood in English. If the court  
16 determines that an interpreter is necessary, the court shall advise the person that  
17 he or she has a right to a qualified interpreter and that, if the person cannot afford  
18 one, an interpreter will be provided for him or her at the public's expense. Any waiver  
19 of the right to an interpreter is effective only if made voluntarily in person, in open  
20 court and on the record.

21 ~~SECTION 13. 885.37 (2) of the statutes is repealed.~~

22 SECTION 14. 885.37 (4) (a) of the statutes is repealed and recreated to read:

23 885.37 (4) (a) The necessary expense of furnishing an interpreter for an  
24 indigent person in a municipal court shall be paid by the municipality.

25 SECTION 15. 885.37 (5) (a) of the statutes is amended to read:

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1           885.37 (5) (a) <sup>leave in</sup> If a court under sub. (1) or (2) or an agency under sub. (3) decides  
2 to appoint an interpreter, the court or agency shall follow the applicable procedure  
3 under par. (b) or (c).

4           **SECTION 16. 885.38 of the statutes is created to read:**

5           **885.38 Interpreters in circuit and appellate courts. (1) In this section:**

6           (a) "Court proceeding" means any proceeding before a court of record.

7           (b) "Limited English proficiency" means any of the following:

8           1. The inability, because of the use of a language other than English, to  
9 adequately understand or communicate effectively in English in a court proceeding.

10           2. The inability, due to a speech impairment, hearing loss, deafness,  
11 deaf-blindness, or other disability, to adequately hear, understand, or communicate  
12 effectively in English in a court proceeding.

13           (c) "Qualified interpreter" means a person who is able to do all of the following:

14           1. Readily communicate with a person who has limited English proficiency.

15           2. Orally transfer the meaning of statements to and from English and the  
16 language spoken by a person who has limited English proficiency in the context of  
17 a court proceeding.

18           3. Readily and accurately interpret for a person who has limited English  
19 proficiency, without omissions or additions, in a manner that conserves the meaning,  
20 tone, and style of the original statement, including dialect, slang, and specialized  
21 vocabulary.

22           (2) The supreme court shall establish the procedures and policies for the  
23 recruitment, training, and certification of persons to act as qualified interpreters in  
24 a court proceeding and for the coordination, discipline, retention, and training of  
25 those interpreters.

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1 (3) (a) The court shall appoint a qualified interpreter for a person in a court  
2 proceeding if the court determines that the person has limited English proficiency  
3 and the person is one of the following:

- 4 1. A party in interest.
- 5 2. A witness, while testifying in a court proceeding.
- 6 3. An alleged victim, as defined in s. 950.02 (4).
- 7 4. A parent or legal guardian of a minor party in interest or the legal guardian

8 of a party in interest. 5. Another person affected by the action,  
as deemed necessary and appropriate by the court.

*for the effective administration of justice*

9 (b) The court may appoint more than one qualified interpreter in a court  
10 proceeding when necessary.

11 (c) If a person with limited English proficiency, as defined in sub. (1) (b) 2., is  
12 part of a jury panel in a court proceeding, the court shall appoint a qualified  
13 interpreter for that person.

14 (d) If a person with limited English proficiency requests the assistance of the  
15 clerk of circuit courts regarding a legal proceeding, the clerk may provide the  
16 assistance of a qualified interpreter to respond to the person's inquiry.

17 (e) A qualified interpreter appointed under this subsection may, with the  
18 approval of the court, provide interpreter services outside the court room that are  
19 related to the court proceedings, including during court-ordered psychiatric or  
20 medical exams or mediation.

21 (f) A qualified interpreter shall be appointed or provided under this subsection  
22 without regard to the ability of the person with limited English proficiency to pay for  
23 the costs of the qualified interpreter.

24 (4) (a) A person with limited English proficiency *The court may accept a waiver of*  
25 qualified interpreter ~~may waive~~ the right to a  
qualified interpreter at any point in the court proceeding if the court advises the

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1 person of the nature and effect of the waiver and determines on the record that the  
2 waiver has been made knowingly, intelligently, and voluntarily.

3 (b) At any point in the court proceeding, for good cause, the person with limited  
4 English proficiency may retract his or her waiver and request that a qualified  
5 interpreter be appointed.

6 (5) Every qualified interpreter, before commencing his or her duties in a court  
7 proceeding, shall take a sworn oath that he or she will make a true and impartial  
8 interpretation. The supreme court may approve a uniform oath for qualified  
9 interpreters.

10 (6) Any party to a court proceeding may object to the use of any qualified  
11 interpreter for good cause. The court may remove a qualified interpreter for good  
12 cause.

13 (7) The delay resulting from the need to locate and appoint a qualified  
14 interpreter may constitute good cause for the court to toll the time limitations in the  
15 court proceeding.

16 (8) (a) Except as provided in par. (b), the necessary expenses of providing  
17 qualified interpreters to persons with limited English proficiency under this section  
18 shall be paid as follows:

19 1. The county in which the circuit court is located shall pay the expenses in all  
20 proceedings before a circuit court and when the clerk of circuit court uses a qualified  
21 interpreter under sub. (3) (d). The county shall be reimbursed as provided in s.  
22 758.19 (8) for expenses paid under this subdivision.

23 2. The court of appeals shall pay the expenses in all proceedings before the court  
24 of appeals.

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1           3. The supreme court shall pay the expenses in all proceedings before the  
2 supreme court.

3           (b) The state public defender shall pay the expenses for interpreters assisting  
4 the state public defender in representing an indigent person in preparing for court  
5 proceedings.

6           SECTION 17. 905.015 of the statutes is amended to read:

7           **905.015 Interpreters for persons with language difficulties, limited**  
8 **English proficiency or hearing or speaking impairments.** If an interpreter  
9 for a person with a language difficulty, limited English proficiency, as defined in s.  
10 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a  
11 communication which is privileged by statute, rules adopted by the supreme court,  
12 or the U.S. or state constitution, the interpreter may be prevented from disclosing  
13 the communication by any person who has a right to claim the privilege. The  
14 interpreter may claim the privilege but only on behalf of the person who has the  
15 right. The authority of the interpreter to do so is presumed in the absence of evidence  
16 to the contrary.

17           SECTION 18. 938.315 (1) (h) of the statutes is created to read:

18           **938.315 (1) (h)** Any period of delay resulting from the need to appoint a  
19 qualified interpreter.

20           **SECTION 9309. Initial applicability; circuit courts.**

21           **(1) COURT INTERPRETERS.** The treatment of sections 20.625 (1) (c), 46.295 (2) (c),  
22 48.315 (1) (h), 48.375 (7) (d) 1m., 758.19 (8), 814.67 (1) (am), (b) (Intro.) and 2., and  
23 (c), 885.37 (title), (1) (a) and (b), (2), (4) (a), and (5) (a), 885.38, 905.015, and 938.315  
24 (1) (h) of the statutes first applies to interpreters used by a clerk of court or appointed  
25 by a court on the effective date of this subsection.

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SECTION 9409

1           **SECTION 9409. Effective dates; circuit courts.**

2           (1) COURT INTERPRETERS. The treatment of sections 20.625 (1) (c), 46.295 (2) (c),  
3 48.315 (1) (h), 48.375 (7) (d) 1m., 758.19 (8), 814.67 (1) (am), (b) (intro.) and 2., and  
4 (c), 885.37 (title), (1) (a) and (b), (2), (4) (a), and (5) (a), 885.38, 905.015, and 938.315  
5 (1) (h) of the statutes takes effect on April 1, 2002.

6

(END)



in municipal courts and administrative agency contested hearings.

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, or
- 3. The person is subject to ch. 51 or 55.
- 4. The person is a witness in an action or proceeding under ch. 985,

(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). ] LEAVE IN

(3) (a) In this subsection:

- 1. "Agency" includes any official, employee 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.

OK w/ Ronni Jones  
12/1/00

in municipal court by the municipality

(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.

3m. 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 W (2d) 585, 760 (1975); 1975 c. 106, 199; Stats. 1975 s. 885.17; 1985 s. 266; 1987 s. 27; 1995 s. 27 ss. 7207 to 7209, 8126 (19). 1995 s. 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. Tol V. L., 184 W (2d) 860, 517 NW (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 bring an application from counsel for an interpreter. State v. Yang, 261 W (2d) 721, 549 NW (2d) 769 (Ct. App. 1996).

When an accused requires an interpreter and witnesses are to testify in a foreign language, the best practice may be to have 2 interpreters, one for the accused and one for the court. State v. Saavago, 206 W (2d) 3, 556 NW (2d) 617 (1996).

See Habla Everything: The Right to an Impartial, Qualified Interpreter. Aralza Wix Law Sept. 1997.

*in municipal courts and administrative agency contested hearings.*

**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 ch. 938.
- 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.

LEAVE IN

*in municipal court*

*by the municipality.*

(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.

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

4. 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 W (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. Thi V. Le, 184 W (2d) 860, 517 NW (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 W (2d) 721, 549 NW (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 W (2d) 3, 556 NW (2d) 687 (1996).

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

# FACSIMILE TRANSMITTAL



SUPREME COURT OF WISCONSIN  
OFFICE OF COURT OPERATIONS  
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From: *Marcia Vandercook*  
Voice number: *608-267-7335*  
Date: *11/28/00*  
Number of pages: *1 + cover*

*Call Brett  
tomorrow - Tue*

*Bob - I talked w/ Ronni Jones  
and we came up w/ this.  
What do you think?  
- MV*