



Supreme Court of Wisconsin

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WISCONSIN DIRECTOR OF STATE COURTS LANGUAGE ASSISTANCE PLAN

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Section I. Legal Basis & Purpose

This document serves as the plan for the Wisconsin Director of State Courts to ensure access to court services for persons with limited English proficiency and deaf and hard of hearing persons. It is designed to respond to Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act, and to the requirements imposed by Executive Order 13166 and related guidance as they apply to recipients of federal funds. The purpose of the plan is to provide a framework for timely and effective language assistance for court users in Wisconsin.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d et. seq, provides that "No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Executive Order 13166 requires all agencies receiving federal funds to address the needs of persons who, due to limited English proficiency (LEP), cannot fully and equally participate in the agency's programs without language assistance.

The U.S. Department of Justice (USDOJ) has issued policy guidance on the responsibility of courts under this order to provide interpreting and translating services. The USDOJ guidance is posted at <http://www.usdoj.gov/crt/cor/13166.htm>. The USDOJ has the right to investigate complaints against any agency that does not provide free language services when necessary to participate in the program. An agency's federal funding may be withheld until the complaint is resolved.

In Wisconsin, the supreme court receives federal funding for the court improvement program (CIP), and grants through the Violence Against Women Act (VAWA). A number of counties receive federal funding directly for circuit court programs also through VAWA, juvenile and drug court grants, child support cooperative agreements, and law enforcement sources. Counties with high LEP populations and counties that receive federal funding for court programs need be particularly cognizant of the federal requirements.

Section II. Needs Assessment

Population. The 2000 U.S. census found that the Hispanic population of Wisconsin increased 107% from the 1990 census to 2000, while the Asian population increased 68%. Although the numbers of both groups are small (3.6% and 1.7% of the state's population respectively), they are a growing segment of the population. Mid-census data shows in 2006 an estimated 8.1% of Wisconsin residents five years and older said they spoke a language other than English at home. In addition, an estimated 1% of the population is deaf and an estimated 6.6% may be hard of hearing.

Four-factor test. USDOJ has derived a four-factor test for agencies to assess their services:

1. Number or proportion of LEP persons in the service area.
2. Frequency with which LEP individuals use the particular program or service.
3. Nature and importance of the program or service: compulsory nature of a program is strong evidence of its importance.
4. Resources available and cost-benefit analysis: expectations are lower for smaller agencies, and agencies can limit services where the cost exceeds the benefit.

Applying the four factors to Wisconsin:

1. The LEP population numbers for the state overall are not high relative to other states. Milwaukee County is the only county with higher than 5% LEP population. However, there are a number of counties with significant numbers of Spanish-speaking, Hmong, or deaf individuals. Mid-census data shows Wisconsin had a 19.9% increase in its foreign born population between 2000 and 2005.
2. The incidence of LEP individuals using court services depends on the case type involved. The incidence of LEP court users is higher than average for criminal, juvenile, and traffic cases, and lower for civil and probate. Many courts use interpreters on a regular basis.
3. Court services are compulsory for many case types and often the only way to handle a problem.
4. While the director of state courts office is a state-funded branch of government with access to the resources of the state government as a whole, the state has faced significant budget deficits for 2003-05 and 2005-07, a pattern likely to continue into the future. Counties likewise are facing severe funding cuts.

Statewide responsibilities. The director of state courts office has made great progress to improve court interpreter services statewide. The supreme court has supported this effort through requests for additional funding, statutory changes, and changes to court rules. The director's office will continue its central role in training and testing interpreters, training judges and court staff, translating vital court documents, and pursuing statutory changes and funding. The state court interpreter program is described on the court's website at <http://wicourts.gov/services/interpreter/index.htm>

Circuit court responsibilities. In Wisconsin, the direct provision of interpreter services, including scheduling and payment, is the responsibility of the circuit courts. The obligation to identify and provide services to LEP persons lies with the circuit courts under Wis. Stats. §885.38(3)(a) and §885.38(8)(a). Initial identification may be done by the clerk of courts office, a judicial assistant, or other court staff. Interpreter needs may also be pointed out by the district attorney, the public defender, community advocates, or others. The ultimate responsibility for appointment of an in-court interpreter belongs to the judge. Clerks of circuit court may appoint for interpreter services used in the clerk's office. §885.38(3)(d).

The primary obligation to pay for court interpreter services also rests with the county. Counties may be reimbursed by the state from an annual appropriation to the director of state courts office, under §885.38(8)(a) and §758.19. The criteria for state reimbursement are set by statute and are summarized in Attachment C. Reimbursement is provided for all in-court proceedings in all case types regardless of indigency and for some out-of-court services with court approval. §885.38(3)(e)

The primary language needs vary by county. Attached is a chart showing foreign language speakers by county who speak English less than "very well", as determined by the 2000 U.S. census. The Wisconsin Population Laboratory published reports describing the Hispanic and Hmong populations of Wisconsin, with county-by-county demographic data, at <http://www.ssc.wisc.edu/poplab/>.

III. Court Interpreter Program

The director of state courts office began working on a long-range plan to improve court interpreter services and to create a system for certifying court interpreters in 1999. The Wisconsin court interpreter program was based on recommendations of the National Center for State Courts Consortium for State Court Interpreter Certification, which also served as a resource to USDOJ in developing the court-related LEP guidance. As a consequence, the services that the USDOJ guidance recommends are very similar to what the Wisconsin court interpreter committee has recommended and what the supreme court has consistently requested for the last four biennial budgets.

Legislative efforts. In 1999 the director of state courts appointed the Committee to Improve Court Interpreting and Translation in the Wisconsin Courts which was composed of judges, clerks of court, court administrators, lawyers, interpreters, legislators, and representatives of the Hispanic, Hmong, and deaf and hard of hearing communities. Since its creation, the committee has made recommendations for a series of changes, all of which have been successful:

- Raising the statutory rate of reimbursement so counties are reimbursed for court interpreter services at close to the actual market rate. This measure, the necessary funding, and other changes were adopted by the legislature effective July 1, 2002.
- Instituting a code of ethics for court interpreters. Such a code was adopted by the supreme court effective July 1, 2002.
- Creating an interpreter program position in the director's office for training court interpreters and offering certification tests to ensure quality services. This recommendation was implemented and a permanent position was approved by the legislature in 2005.
- Authorizing reimbursement for all cases where an interpreter is needed -- in civil as well as criminal cases, and for non-indigent as well as indigent parties. This measure was adopted by the legislature effective October 27, 2007.

Funding efforts. In 2002, the Department of Workforce Development Office of Refugee Services provided a \$49,000 grant from federal refugee resettlement funds for court interpreter training. The director's office used this funding to present a series of two-day orientations around the state. The director's office hired a half-time staff assistant to manage the logistics of the orientation programs. The grant was continued into 2003 to allow presentation of four additional interpreter trainings.

In 2004-05, U.S. Senator Herb Kohl secured a congressionally mandated Byrne grant to allow the Wisconsin courts to continue the interpreter orientations, offer certification tests in Spanish and other languages, and offer specific language training to prepare interpreters to take certification tests. The grant provided funding up to \$248,000 over a two-year period. The court used this funding to hire a full-time interpreter program manager and a half-time program assistant and also began translating statewide court forms into Spanish and Hmong.

Interpreter training. The training and testing program is the most crucial part of the effort to improve interpreter services, since it is the piece that ensures quality as well as quantity of services. The orientation curriculum gives participants an overview of the needs and expectations of the court, with emphasis on ethical conduct, legal terminology, court procedure, and basic legal interpreting skills. It is appropriate for both foreign language and sign language interpreters who hold national certification from the Registry of Interpreters for the Deaf (RID). Scholarships for speakers of refugee languages were available in 2002-03 under the grant from the Office of Refugee Services. Since 2002, the interpreter program has trained over 1100 people speaking 38 languages. The director's office also offers a written test developed by the National Center for State Courts which covers English proficiency, legal concepts, knowledge of the interpreter code of ethics, and written translation. Some of the federal funding was used to offer specific language training for Spanish interpreters (2004 and 2005) and Hmong interpreters (2006). Orientation training and testing is funded completely through participant fees.

Interpreter roster. The court interpreter program maintains a roster of trained interpreters available to work in the courts. This roster is used by state and municipal courts, lawyers, law enforcement agencies, and others needing interpreters with legal training. To be listed on the roster, the interpreter must:

- attend and complete orientation;
- pass at least one part of a written test (oral language interpreters) or possess a generalist certificate from the Registry of Interpreters for the Deaf (RID) or other approved certifying body;
- sign an oath form to be filed with the director's office;
- meet character and fitness requirements set by the director's office; and
- keep a current address on file.

Interpreter certification. A oral certification exam is a performance test which measures on-the-job interpreting skills in a legal setting. To become a certified court interpreter in Wisconsin, in addition to the above requirements for inclusion on the roster, an interpreter must pass the oral performance exam designed by the National Center for State Courts Consortium for State Court Interpreter Certification. The director's office also grants recognition to passing scores on NCSC certification exams from other state courts, the federal court interpreter exam, National Association of Judiciary Interpreters and Translators (NAJIT) exam, and the legal specialist certificate offered by RID.

The director's office began certification testing in March 2004. Currently, 42 people passed the certification examination in Spanish and one person passed the certification examination in German. Interpreters certified in other languages who reside in neighboring states are also listed on the roster through reciprocal arrangements between Wisconsin and other consortium states.

Translations. The director's office used some of the funding from the Office of Refugee Services to contract for translation of a Hmong-English legal glossary which was completed in 2006 for Hmong court interpreters to prepare for the Hmong certification exam and to use in court.

The director's office also used part of the federal grant funding during 2004-05 to contract for translation of 16 vital statewide documents. Court documents that were translated into Spanish include bail/bond form, plea questionnaires, waiver of attorney, affidavits of indigency, termination of parental rights advisements, right to appeal advisements, and domestic abuse restraining order and injunction instructions. In 2005, a supreme court rule was created governing the procedure and format for translating court forms. In 2006, translation into Spanish of 40 additional forms began with remaining federal grant money as well as supplemental funding from the CIP and VAWA-STOP grants.

Future legislative requests. For the 2009-2011 biennial budget, the supreme court has included three additional initiatives related to interpreter services:

- 4% increase in interpreter reimbursement funding to reflect higher LEP population and greater use of certified interpreters
- increase in mileage reimbursement to \$.485
- non-statutory language request to allow scheduling and payment of all interpreter services at the judicial district level as part of a 2-year pilot program. The purpose of this pilot will be to determine whether a centralized scheduling system is a more viable option than the existing county coordination of interpreter services with state reimbursement.

Participation with NCSC activities. The court interpreter program staff has actively participated in the sub-committee work with NCSC by serving as a voting member of the Annual Meeting Planning Committee (2006-2008) and as an interested member of the Professional Issues Committee (2007-2008).

Section IV. Language Resources

Statewide resources. Information about training, hiring, and using interpreters is on the court's website at <http://wicourts.gov/services/interpreter/index.htm>. The website contains the statutes, court rules, and most of the case law applicable to court interpreters. It also contains the roster of interpreters which was upgraded in 2007. The roster draws interpreter information from a centralized database and is searchable by language and county. It shows interpreters available to work in particular courts with current contact information and level of credentials.

During 2004-05, the director of state courts distributed additional materials to help LEP individuals:

- "I speak" cards to assist in identifying what language a person speaks (see <http://www.usdoj.gov/crt/cor/Pubs/ISpeakCards.pdf>)
- translated signage informing court users of interpreter services
- court documents and forms as they are translated (see <http://wicourts.gov/forms1/circuit.htm>)
- identification of bilingual materials on the court website.

Local resources. When an LEP person needs an interpreter for a hearing he or she notifies court personnel, who then hire an interpreter to interpret during the proceeding. Interpreters may be court employees, independent contractors, or work through an agency. Some circuit courts have their own staff interpreters. If court personnel are unsure what language the person speaks, they may use the "I speak" cards.

A certified interpreter is the first choice for appointment if available. When a diligent effort has been made to find a certified court interpreter and none is available, the court may appoint a non-certified court interpreter who is on the statewide roster. If neither a certified nor roster interpreter is available, the court may appoint a non-certified interpreter who is not listed on the statewide roster and who is otherwise qualified. The court may also use a video or telephone interpreter in appropriate circumstances. The use of certified interpreters is a priority issue that is monitored by the chief judges and has been the subject of discussion at their regularly scheduled meetings in 2006, 2007 and 2008.

Court staff and judges should be aware that many people who need an interpreter will not request one because they do not realize interpreters are available or because they do not recognize the level of English proficiency or communication skills needed to understand the court proceeding. Therefore, when it appears an individual has difficulty communicating, the court should err on the side of providing an interpreter to ensure full access to the courts.

The circuit courts are also responsible for providing assistance to LEP and deaf and hard of hearing individuals outside of the courtroom, on the phone, at the clerks counter, and through whatever outreach programs the court provides.

Section V. Public input

Copies of this language assistance plan and local plans will be provided to the public upon request. Courts that have their own websites should post their plan there. Model language assistance plans for circuit court use are available (see Attachment A). The director's office will notify statewide LEP-related advocacy groups that the plan is available. If appropriate, plans may be revised to reflect public comments and suggestions. Each circuit court should send a copy to any local community groups or advocacy organizations whose clients will be affected by the plan.

Complaints regarding language access and services should be brought to the attention of the district court administrator and then the director's office for review. Complaints about interpreters who have allegedly engaged in unethical or unprofessional conduct in the course of performing their interpreter duties should be similarly reported. A grievance procedure for filing complaints against interpreters was developed and is posted on the court's website at <http://wicourts.gov/services/public/interpretercomplaint.htm>

Section VI. Training

Statewide judicial, clerk, and attorney training. The interpreter program in conjunction with the director's office and the office of judicial education have presented numerous programs on working with interpreters which include: judicial conference (2002 and 2008); judicial college (2008); juvenile and civil law judicial education seminars (2005); criminal law and sentencing seminar (2008); and to clerks of circuit court conferences (2000-2008). The interpreter program has made regular presentations on court interpreter training and certification at the annual conference of the state Office of Refugee Services (2000-2003 and 2008). The interpreter program has presented similar programs to conferences of court commissioners (2003 and 2008); district attorneys (2003, 2004 and 2008); defense attorneys (2003, 2004 and 2008); court reporters (2003); municipal judges (2003, 2004 and 2008); victim-witness staff (2005); domestic violence advocacy groups (2007); and other interested groups.

LEP training for circuit court staff and other court related offices. Front line staff members are often the first points of contact with LEP individuals. Deputy clerks of courts and judicial assistants should be trained on ways to identify language issues and deliver appropriate services. Staff should also be reminded of the requirements of the Americans with Disabilities Act. As new employees are hired, information on the language assistance plan and the ADA should be included in their new employee orientation. The interpreter program has provided specific LEP training to the Department of Corrections, correctional facilities, Office of Lawyer Regulation, State Law Library, equal opportunities commission (2005) and local law enforcement (2007). The interpreter program has conducted specific site visits with individual courts to provide resources and to help improve services to LEP court users

Section VII. Monitoring

Evaluation of the language assistance plan. Biennially, the director's office will coordinate with the circuit courts to review the effectiveness of the plan, to identify problems and proposed action. Elements of the evaluation will include:

- number of LEP persons receiving court interpreters
- determination if additional services or translated materials should be provided
- assessment of whether staff members adequately understand language assistance policies
- feedback from community groups and individuals

Circuit court responsibilities. Under the statewide language assistance plan for the courts, each circuit court will be responsible for conducting a local needs assessment and developing a plan to meet the court-related needs of the local LEP population. The courts may choose to do this in conjunction with other county offices as they evaluate their own language services. The court should update its needs assessment biennially and determine whether changes to its language assistance plan are required. This may involve tracking the number of interpreters requested for each language, consulting new demographic information, observing trends in court usage, etc. Each circuit court's language assistance plan shall be filed with the director of state courts office.

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Effective date. The effective date of this plan is January 26, 2004.

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Attachments: Circuit Court Model Language Assistance Plan (Att. A)
Two-page summary on effective use of court interpreters (Att. C)