



# Supreme Court of Wisconsin

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Attachment B

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## WISCONSIN DIRECTOR OF STATE COURTS LANGUAGE ASSISTANCE PLAN

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### Section I. Legal basis and 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 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, the court interpreter program, and other smaller grants. A number of counties receive federal funding for circuit court programs through the Violence Against Women Act, 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. An estimated 380,322 Wisconsin residents (7.8% of those five years and older) now say they speak a language other than English at home. Of those, 148,910 (3.0% of the population) reported they speak English less than "very well". 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.
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 daily 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 2001-03 and 2003-05, a pattern likely to continue into the future. Counties likewise are facing severe funding cuts.

**Statewide responsibilities.** The director of state courts office has taken the lead in the effort to improve court interpreter services statewide (see long-term plan, below). The supreme court has supported this effort through requests for additional funding, statutory changes, and changes to the court rules. The director's office intends to continue its central role in training and testing

interpreters, training court staff, translating court materials, and pursuing statutory changes and funding. The state court interpreter program is described on the court's website at <http://www.wicourts.gov/circuit/CourtInterpreter.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 D. Reimbursement is currently limited to cases where the LEP person has been determined to be indigent. Reimbursement is specifically provided in criminal, juvenile, mental health, and child protection cases; it is also allowed for other types of proceedings if ordered by the court. §885.38(3)(f).

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. Long-range plan**

The director of state courts office has been working on a long-range plan to improve court interpreter services and to create a system for certifying court interpreters. The Wisconsin court program is based on the 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 requested for the last two biennial budgets.

**Legislative efforts.** In 1999 the Director of State Courts appointed the Committee to Improve Court Interpreting and Translation, composed of judges, clerks of court, court administrators, lawyers, interpreters, legislators, and representatives of the Hispanic, Hmong, and deaf and hard of hearing communities. The committee made recommendations for a series of changes, which have met with varying degrees of success:

- Raising the statutory rate of reimbursement so that 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.

- Authorizing reimbursement for all cases where an interpreter is needed -- in civil as well as criminal cases, and for nonindigent as well as indigent parties. This measure and the necessary funding were recommended by the governor in 2003 but were not funded by the legislature.
- Instituting a code of ethics for court interpreters. Such a code was adopted by the supreme court effective July 1, 2002.
- Creating a program in the director's office for training court interpreters and offering certification tests to ensure their qualifications. This recommendation has been implemented gradually based on available funding, described below.

**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 another four interpreter trainings.

For 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 Hmong, and offer advanced language training to prepare interpreters to take the Spanish and Hmong certification tests. The grant will provide funding up to \$248,000 over two years. The court will also use the funding to hire a full-time interpreter program manager and undertake translation of court documents and 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. Scholarships for speakers of refugee languages were available in 2002-03 under the grant from the Office of Refugee Services. The program trained 372 people speaking 19 languages in 2002-03. The director's office also gives a written test developed by the National Center for State Courts for interpreter screening. The four-part written test covers English proficiency, legal concepts, knowledge of the interpreter code of ethics, and translation.

**Interpreter roster.** The court interpreter program maintains a roster of trained interpreters available to work in the courts. This roster will be used by state and municipal courts, lawyers, law enforcement agencies, and others needing interpreters with legal training. The fact that an interpreter is listed on the roster does not mean that the interpreter is certified. To be listed on the roster, the interpreter must:

- attend and complete the orientation;
- demonstrate a minimum level of English proficiency on a written exam;
- 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 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, and the legal specialist certificate offered by Registry of Interpreter for the Deaf.

The director's office will use federal funding to offer the NCSC Spanish certification exam for the first time in March 2004. The Hmong certification exam will be offered in late 2004 after an intensive training for a small group of skilled interpreters. For the foreseeable future, the only languages in Wisconsin for which certified interpreters are likely to be available are Spanish, Hmong, and American Sign Language.

**Translations.** The director's office is using some of the funding from the Office of Refugee Services to contract for translation of a Hmong-English legal glossary. There currently is no glossary or reference work providing an accepted legal vocabulary for Hmong. The glossary will be invaluable for Hmong court interpreters in Wisconsin, Minnesota, and California, and will help interpreters prepare for the Hmong certification exam.

The director's office will use some of the federal grant funding during 2004-05 to contract for translation of vital documents. Court documents that have been identified as possible candidates for translation include plea questionnaires, waiver of attorney and waiver of preliminary hearing forms, affidavits of indigency, victim notification forms, termination of parental rights advisements, right to appeal advisements, bench warrant forms, domestic abuse injunction instructions, and the small claims booklet. These are uniform statewide forms that need to be translated at the state level. Some counties may have local informational materials and forms to be translated locally, but most translations will be needed statewide.

**Future funding requests.** For the 2003-05 biennial budget, the court requested sufficient funding to allow state reimbursement for the use of foreign language and sign language interpreters in all cases, including civil and family, and regardless of the party's ability to pay. This request was not approved by the legislature. Without additional state funding, counties may be left with the obligation but not the means to provide these services. Because the statutory reimbursement does not always equal the actual cost, the counties will continue to pay a substantial share of interpreter costs even if additional state funding is provided.

Title VI of the Civil Rights Act contemplates that interpreter services will be provided free of charge whenever necessary to participate in a federally-funded program. The director's office recognizes that in the current budget situation it will be difficult for county boards to provide funding for all the services contemplated by Title VI. However, the court is committed to access to justice for all the people of Wisconsin and will pursue this goal through statutory changes and appropriate funding requests. We will continue to work with the circuit courts to understand and comply with the federal guidance as much as funding constraints will allow.

## **Section IV. Language Resources**

**Statewide resources.** Information about training, hiring, and using interpreters is on the court's website at <http://www.wicourts.gov/circuit/CourtInterpreter.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 who have attended court training and taken written exams. This roster will be expanded and improved as more interpreters attend the trainings, take the certification exam, and apply for reciprocity.

In 2004-05, the director of state courts plans to develop or distribute 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
- 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 judicial districts 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.

Court staff and judges should be aware that many people who need an interpreter will not request one because they do not realize that 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 that 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. 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.

## **Section VI. Training**

**Statewide judicial, clerk, and attorney training.** The director's office and the office of judicial education presented programs on working with interpreters to the 2002 judicial conference and to clerk of circuit court conferences in 2000, 2001, and 2004. The director's office makes regular presentations on court interpreter training at the annual conference of the state Office of Refugee Services. The director's office has presented similar programs to conferences of court commissioners (fall 2003), district attorneys, defense attorneys (fall 2003), court reporters (spring 2003), municipal judges (summer 2003), and other interested groups.

**Circuit court staff training.** 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 director's office will work with the circuit courts to provide resources and ideas for staff training.

## **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 local plan to meet the court-related needs of the local 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  
Summary of demographic data  
Two-page summary on effective use of court interpreters