



TENNESSEE COURTS SPOKEN AND WRITTEN LANGUAGE ASSISTANCE PLAN (LAP)

Tennessee thanks the U.S. Dept. of Justice Civil Rights Division and LEP.gov. Tennessee borrowed heavily from these agencies in creating this LAP.

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I. LANGUAGE ACCESS POLICY DIRECTIVES & PURPOSE

The Tennessee Supreme Court has dictated the court system's policy directives concerning language access in the courts in Tennessee Supreme Court Rule 41 which provides in its preamble the following:

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency ("LEP"). It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

In addition, Supreme Court Rule 42 provides in the commentary of Section 1 that:

This rule recognizes that for most people living in the United States, English is their native language, or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. For them language can be a barrier to understanding and exercising their legal rights, and to securing meaningful access to the judicial system.

This rule is promulgated to assist the courts in this state in providing equal access to the courts to participants who have a limited ability to speak or understand the English language.

To this end, the Tennessee Supreme Court created the Court Interpreter Credentialing Program under the Administrative Office of the Courts (AOC) who have developed a plan to meet the needs of the LEP (Limited English Proficient) population in Tennessee's courts.

The policy of the Tennessee court system and the purpose of this Language Access Plan is to provide equal access to the courts and to the participants who have a limited ability to speak or understand the English and to provide provide language assistance at no cost to the eligible LEP individuals.

II. DEFINATIONS

Audio or Video Transcription and Translation - written transcription of the entire verbal content and translation of the non-English verbal content of an audio or video recording.

Bilingual staff - a staff person who has proficiency in speaking, reading and writing skills in two or more languages.

Court Proceedings - any hearing, trial, or other appearance before any Tennessee general sessions court, or municipal court exercising general sessions jurisdiction, or any juvenile, probate, circuit, chancery, criminal, or appellate court, in an action, appeal, or other proceeding, including any matter conducted by a judicial magistrate.

Limited English Proficient ("LEP") Person - a participant in a legal proceeding who has limited ability to speak or understand the English language.

Language Assistance Services - oral and written services needed to assist LEP persons to communicate effectively with court personnel and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, court programs or services.

Meaningful access - providing equal access to the courts to participants who have a limited ability to speak or understand the English language by removing communication barriers, as far as possible, so that LEP persons are placed in the same position as similarly situated persons for whom there is no such barrier.

Participant - a party, witness, victim of a crime or other person in a legal proceeding.

Program or Activity - all operations supervised or provided by the courts.

Qualified Translator or Interpreter - an individual that is either credentialed pursuant to Supreme Court Rule 42 or who has proficiency to interpret or translate as determined by the court or court staff (in the case of other agencies/elected officials offices within a courthouse, as determined by that agency/official).

Sight Translation - oral translation of a written text.

Vital document - materials that contain information necessary to allow an LEP person access court services or programs and to understand court processes and his/her rights.

Written Translation - the rendering of a written document from one language into a written document in another language.

III. LAWS AND LANGUAGE NEEDS

A. The Federal Law and Department of Justice Guidance

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (hereinafter Title VI), provides that no person 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 activity receiving Federal financial assistance. In the regulations and guidance implementing the Civil Rights Act, the U.S. Department of Justice (DOJ) defines and "program and activity" to include "any department,

agency... or other instrumentality of a state or local government...and part of which is extended Federal financial Assistance." 42 U.S.C. 2000d-4a. The Department of Justice has created guidance to assist in the development of plans (see attached 67 Fed. Reg. 41,464 Section VII) and programs to ensure that states are meeting the requirements of Title VI and are taking "reasonable steps to ensure meaningful access to their programs and activities by LEP persons" 67 Fed. Reg. 41,459 (June 18, 2002). The DOJ Guidance offered a four-factor analysis, to determine what language assistance is required. These factors include review of:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or recipient.
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity or service provided by the program to people's lives; and
4. The resources available to the recipient and the costs of the same. 67 Fed. Reg. 41,459 (June 18, 2002)

The DOJ guidance describes Title VI protections that extend beyond providing interpreters in court proceedings. Guidance states that: "Coverage extends to a recipient's entire program or activity". 67 Fed. Reg. 41,459 (June 18, 2002). The Guidance suggests that courts should consider four factors to determine the extent of the language assistance that must be provided to LEP individuals. Again, that four-factor analysis consists of the following elements:

1. Number or proportion of LEP people in the court's jurisdiction - demography;
2. Frequency with which LEP individuals come into contact with the court;
3. The nature and importance of the program, activity or service provided by the court to the LEP person (including the consequences of lack of language services or inadequate services); and
4. Resources available to the court locally and statewide and costs. 67 Fed. Reg. 41,459 (June 18, 2002)

In determining what language services should be provided, DOJ guidance states that "the more important the activity, information, service or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed A [federal funding] recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

In addition to discussing the need for oral interpreter services, the DOJ guidance addresses the need for translation of written materials. The guidance directs federal funding recipients to consider whether a document is "vital" and should be translated. The guidance directs that whether a document is considered "vital" should be based on "the importance of the program or service it involves, and the consequence to the LEP person if the information provided by or submitted via the document is not conveyed accurately or in a timely manner."

B. Tennessee Law

In 1999, the AOC obtained a federal grant to commence the creation of a pilot program for training and testing court interpreters. At the end of this pilot in 2002, the Tennessee Supreme Court adopted Supreme Court Rules 41 and 42 and the AOC began administering the court interpreter program. These Rules provide for interpreter use, ethics and credentialing. The rules apply to all interpreters in all courts in this state, including without limitation, municipal court, general sessions court, juvenile court, probate court, circuit court, chancery court, and criminal court. Section 3 of Rule 42 provides that appointing an interpreter is a matter of judicial discretion and it is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English. Once an interpreter need is determined, the court must appoint a qualified interpreter - the court must use the highest credentialed interpreter first, and if the court uses lesser qualified interpreters, the court must make findings that "the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting" and that the "proposed interpreter has read, understands, and will abide by the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts."

1. Qualifications for Interpreters Used in Tennessee Courts

Tennessee Supreme Court Rule 42(3) dictates that when the courts determine an interpreter is needed the courts are to first use credentialed (certified and or registered interpreters). The Rule provides that:

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

Section 5 of the Rule 42 states the steps one must complete to become a credentialed court interpreter. Specifically:

1. Attend an approved ethics and skill building workshop;
2. Pass an approved criterion-referenced written examination;
3. Submit to a criminal background check. Convictions for any felony or for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if such conviction is ten years old or less as provided in Tennessee Rule of Evidence 609;
4. Provide verification of United States citizenship or the legal right to work and remain in the United States;
5. Complete any required forms and pay any required fees; and
6. Complete any additional requirements established by the Administrative Director of the Courts. If an oral performance examination is available, a registered court interpreter must

sit for the examination at least once every twelve months from the date they become designated as a registered court interpreter until they receive a passing grade to become a certified court interpreter.

The Rule also provides that credentialed interpreters must renew credentials every three years and must obtain continuing education hours in order to renew.

At this time, Tennessee has Rule 42 credentialed interpreters in Spanish, Arabic, Farsi, German, Japanese, Korean, Mandarin, Yoruba, Romanian, Russian, Swahili, Somali, and Portuguese. If the court needs an interpreter, the AOC has posted all credentialed interpreters on its web page, listing the certified and registered interpreters by credential, language, and alphabetically listing the interpreters for each language and credential by city so as to assist the courts in finding an interpreter near their location. If the court needs an interpreter in a language where there is not a certified or registered interpreter, the AOC is contacted and provides names of individuals that have commenced the credentialing process and state they speak the language or provides contact information obtained from other sources (Tennessee Language Center), other states that belong to the Consortium for Language Access in the Courts, etc.). To assist the courts in finding an interpreter and following the steps of Rule 42 to locate credentialed interpreters, the AOC drafted a "bench card" for interpreter issues which can be found on the AOC website at: <http://www.tncomts.gov/programs/court-interpreters>.

2. Court Interpreters Must Comply with the Code of Ethics for Court Interpreters

All certified and registered interpreters are tested on ethics for court interpreters through the credentialing process. Regardless of an interpreter's credentials, all court interpreters are expected to be familiar with and follow the Code of Ethics as listed in Supreme Court Rule 41.

3. Payment of Interpreters

In 2012, the AOC obtained funding from the Tennessee General Assembly to provide for the costs of interpreter services in all court hearings (civil and criminal) in all juvenile, general sessions, trial and appellate courts, regardless of the parties' indigency status. Rule 42 was modified, effective July 1, 2012, to note the modifications for payment of interpreter costs.

C. Tennessee Language Access Needs

Since the AOC received funding in 2012, the AOC created an invoicing system in 2018. This system allows the AOC to capture the need for spoken foreign language interpretations in the courts as all invoices for all interpreter services in all courts across the state are sent to and processed for payment through the AOC and the invoicing system ACAP. The biggest need for interpreters has remained Spanish. During the time period of July 1, 2016-June 30, 2017, the percentages of interpretation need were 93% Spanish, 2% Arabic and 5% other languages. The other languages for which the AOC received invoices

were Amharic, Bengali, Bosnian, Burmese, Cantonese, Farsi, French, German, Gujarati, Haitian Creole, Hindi, Kirundi, Korean, Kurdish, Lau, Mandarin Chinese, Nepali, Panjabi, Persian, Polish, Portuguese, Romanian, Russian, Serbian, Somali, Swahili, Thai, Vietnamese and Zomi.

The Tennessee Quick Facts as reported by the US Census Bureau in 2017 note that 6.8% of the total Tennessee population five years of age or older speak a language other than English at home. 1.8% of the population is Asian persons and 5.2% of the population is persons of Hispanic or Latino origin. According to the US Census data, in 2013, of the 397,545 population over 5 years of age that speak a language other than English at home, 232,394 or 58% speak Spanish; 73,653 or 18% speak other Indo-European languages; 59,919 or 15% speak Asian and Pacific Island Languages, and 31,579 or 8% speak all other languages. Clearly, the large percentages of the population that speak a language other than English at home speak Spanish. The percentages of the languages the judges see in their courtroom fairly follow this data.

IV. GOALS AND INITIATIVES OF TENNESSEE LANGUAGE ACCESS PLAN (LAP)

In order to provide interpreters as federally mandated and pursuant to Tennessee Supreme Court Rules 41 and 42, the AOC must continue striving to assist the courts in this state in providing equal access to participants who have a limited ability to speak or understand the English language. The goal of this plan is to review:

- A. Identification of LEP Persons;
- B. Language Resources to be Provided;
- C. Training Programs for Staff, Judges and Others;
- D. Providing Notice of Resources to LEP Persons; and
- E. Vital Documents

A. Identification of LEP Person(s):

To assist in identification of LEP persons, the courts and clerks' office in Tennessee have been provided "bench cards" and "information cards" which provide information about the Tennessee interpreter program and also have attached to the card, the language identification cards (or "I Speak Cards"), which allow LEP persons to identify their language needs to staff. The "I Speak Card" was created by using the information on the Census Bureau website. The card has written "I speak (insert language)" in English and many other languages per census data. In addition, "Right to Interpreter" poster notes in English and many other languages that note: "You have the right to an interpreter at no cost to you. Please point to your language. An interpreter will be called. Please wait." are resources available to clerks and courts and are located on the AOC interpreter web page at: <http://www.tncourts.gov/programs/court-interpreters>. These resources encourage LEP individuals to self-identify their language. Use of these resources enables the LEP person to be identified and allow staff to then seek assistance from interpreters for these individuals.

B. Language Resources to be Developed and Provided:

The AOC belongs to the national Consortium for Language Access in the Courts. This Consortium provides testing materials for certification in 18 languages including, but not limited to, Spanish, Arabic, Bosnian, Cantonese, Filipino, French, Haitian Creole, Hmong, Ilocano, Khmer, Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Turkish, and Vietnamese. The AOC offers certification exams in all languages in which the National Consortium for Language Access in the Courts provides testing materials. In languages where certification does not exist, interpreters can still reach the registered credential stage by taking the two-day interpreter Ethics and Skills Building Workshop, passing a written exam, passing oral proficiency interviews in English and the target language, and passing the criminal background check.

To become a certified or registered interpreter, a candidate must pass many exams. (See the flow chart created by the AOC interpreter staff)

https://www.tncourts.gov/sites/default/files/docs/credentialing_process_0.pdf

To improve the passage rate, the state's Interpreter Program the AOC will continue to research funding resources for these activities and programs. During the fiscal years 2017 and 2018, the AOC applied for and received funding from the Tennessee Office of Criminal Justice Programs to hold a West Tennessee and East Tennessee Interpreter Summit. At the Summit, stakeholders including judges, clerks, DA's, PD's, law enforcement, lawyers and potential interpreters along with community members were invited to learn and understand the need for court interpreters, the credentialing process and how all can work together to increase the number of credentialed interpreters. The Summit also involved the Access to Justice Faith and Justice Alliance with the goal of having the faith community aware of the issues facing the courts regarding interpreter needs. This funding also paid for the costs of interpreter testing and training.

The AOC will continue to make Interpreter Program brochures and resources as noted in section IV (A) of this Plan, available at clerks and judicial conferences in an attempt to recruit interpreters. In addition, the AOC will continue to work with organizations in Tennessee to encourage bilingual individuals to start the credentialing process. The AOC has contacted local colleges and ethnic organizations and has provided documents to cultural fairs in the State. Again, the Access to Justice Community is also assisting in this recruitment effort. The AOC will continue to try to keep the costs of the credentialing process low and will continue to use AOC staff as possible to administer exams. The Interpreter Program will continue to consider ways to recruit skilled candidates to commence the interpreter credentialing process through its website, local colleges, judges encouraging those in their community and contacts with cultural organizations in the State.

The AOC will continue to maintain the credentialed interpreter list on its web site. The AOC has an interpreter web page that allows for court staff and clerks offices, agencies that work with the courts, and members of the public to locate information on language interpreter services. This link can be found at:

<http://www.tncourts.gov/programs/court-interpreters/find-court-interpreter>. On this page, one can find:

- Types of language services available: All credentialed interpreters are listed by certified and registered credentials, language, and then alphabetically listed for each language and credential by county so as to assist the courts in finding an interpreter near their location. If one needs an interpreter in a language where there is not a certified or registered interpreter, the AOC is contacted and provides names of individuals that have commenced the credentialing process and state they speak the language.
- How staff can obtain those services: Staff can find interpreters by referring to the list on the web page. Since interpreters are not salaried in Tennessee, but are independent contractors, the agency/person needing the interpreter contacts the interpreter directly for services.
- How staff can respond to LEP callers: If there is an LEP caller, if there is not bilingual staff that can assist, the staff can look to the list of interpreters on the AOC website to find someone that can assist the party in the language needed. In addition, the state of Tennessee has a contract with a telephonic interpreting agency that clerks may use to assist by phone and many counties have their own telephonic interpreting contract.
- How staff can respond to written communications from LEP persons: Most credentialed interpreters listed on the AOC website have taken the oral exams at least once and have translated written documents as part of their testing. Therefore, they can assist with written document translation if necessary.
- How staff can respond to LEP individuals who have in-person contact: Bilingual local staff will be able to assist as needed in these cases. If that is not possible, staff can use the "I Speak" cards provided and the "Right to an Interpreter" poster on the AOC website to determine the language needed. Staff can then look to the list of interpreters on the AOC website to find someone that can assist the party, can contact AOC staff to assist or can call the contracted State or county telephonic interpreter agency.

C. Training Programs for Staff, Judges, and Others:

Judges and clerks have been trained by the AOC staff and interpreters at their conferences throughout the years on how to obtain an interpreter. The bench cards have been provided to clerks' office and a link to the "Right to an Interpreter" posters noting the right to an interpreter is available for printing on the AOC website. Staff that have contact with the public should contact bilingual staff or use the "I Speak" cards and "Right to an Interpreter" poster to obtain assistance for LEP person needing language assistance. The AOC will continue to provide education programs and materials on the interpreter program at clerks and judicial conferences. During the conferences the AOC will stress the need for courts and clerks' offices to assist in this education and recruitment process. Throughout the year, blast emails and communications on interpreter issues are sent as needed

by the AOC. In addition, the AOC has Title VI training available on-line with testing materials. Judges can also take advantage of this additional training.

D. Providing Notice and Resources to LEP Person(s):

In order to inform LEP persons that interpreter services are available, the clerk's offices and judges have been provided or have available to them, the bench cards and "Right to Interpreter" posters and are trained periodically at their conferences regarding interpreter issues. It is hoped that the "I Speak" cards and "Right to Interpreter" posters are used to determine the needs of the LEP persons. As far as free services, the costs for in-court interpretation are paid by the State pursuant to Supreme Court Rule 42 and the right to the free services are noted on the "Right to an Interpreter" poster found on the AOC website at:

<http://www.tncourts.gov/programs/court- interpreters> Subcontractors who provide services either through grants or contracts with the AOC have in their contracts that they will not discriminate, etc. In this way they are notified that they have an obligation to provide language assistance to LEP individuals who participate in their programs and activities. The AOC will continue to take reasonable steps in educating judges, staff and clerks on interpreter issues.

E. Vital Document Translation:

Each year the AOC will review to determine vital documents that need to be translated for LEP individuals. The AOC will continue to receive assistance with this review from the Tennessee Supreme Court Access to Justice Commission. This Commission has committees that review language barriers and disabilities and the AOC has an Access to Justice Coordinator that works with the Commission and the AOC on these issues. The AOC consistently reviews which vital documents/forms need to be developed and translated into other languages. Once developed, these materials are then translated as funding is obtained. In addition, the ACAP (AOC Claims and Payment) program, which is a new online system for submitting indigent fee claims, will also assist us in determining which languages the documents need to be translated into.

Currently there are written translated materials provided to the public in languages other than English. These materials, forms and videos are found on the AOC website at:

<http://tncourts.gov/programs/self-help-center/forms/order-protection-forms>

<http://tncourts.gov/programs/parenting-plan/forms>

<http://www.tncourts.gov/programs/self-help-center/what-should-i-expect-court-video>

These materials include but are not limited to Orders of Protection forms that have been translated into "plain language" and then into Spanish and five other languages; parenting plan forms, and informational videos on what to expect in court. In addition, as stated earlier, the Access to Justice Commission is reviewing which forms are most needed by pro se individuals and for pro bono individuals and is putting these forms into plain language. Once put into plain language, these forms will be translated into other languages as funding becomes available through grants or other funding resources.

V. MONITORING AND UPDATING LAP

Tennessee is not a unified court system. In addition, court clerks and other agencies located in courthouses are run by elected officials or other state agencies of which the state judicial branch has no control. However, the State does have control over payment of interpreter costs for court hearings. Funding from the Tennessee General Assembly for interpreter costs during juvenile, general sessions, trial and appellate court hearings has assisted the courts in determining language needs and providing the interpreter services during court hearings. It is the intention that this LAP is a living, breathing document to be modified as needed to provide access by LEP's to the court system. As such, there will be continuing assessment of:

- Languages for which court interpreters are appointed.
- Needs for translated materials, training and education
- Changes in laws, policies or rules affecting language services
- Communication to courts and staff regarding language access needs and services

A. Data Collection

Determining Need:

As stated above, the ACAP system will assist in data collection of cases in the court system using interpreters and the language interpretation needs of the parties.

B. Judges

Judges in their counties must look to developing local solutions to interpreter needs.

To that end, judges should:

1. Make reasonable efforts to notify litigants of their right to an interpreter and at no cost.
2. Take reasonable steps to ensure pursuant to Rule 42, those interpreters appointed on cases before them are qualified interpreters.
3. Take reasonable steps to note specific languages needs in their jurisdiction and encourage those that speak these languages in their communities to contact the AOC to learn about becoming a credentialed court interpreter.
4. Take reasonable steps to ensure, as possible, that information and vital documents are available in languages other than English as needed.
5. Take reasonable steps to make out-of-court service providers aware that they must provide for language needs of clients coming to them for services.
6. Presiding judges should make all judges aware of this language access plan, or consider creating a local language access plan using the template found on the AOC website at: <http://www.tncourts.gov/programs/court-interpreters>.

To assist with court dockets and the efficient and economic use of the limited interpreter resources, courts may want to consider modifying their dockets LEP parties and try to schedule the few interpreters that are available such that they are most economically paid - if paid for a two hour minimum on a criminal indigent docket, it

would be a best practice for judges to ask the interpreter to assist other courts with interpreter issues if the interpreter has not actually interpreted for the two hour minimum.

C. Clerks and Court Administrators

Because the clerk's office is usually the first office that the public comes in contact with and an LEP person in the courthouse, the clerk's office may be aware that an interpreter is needed prior to a hearing being held. Clerks can take reasonable steps to notify the right to an interpreter at no charge ("Right to Interpreter" poster should be posted in or near the clerk's office) and to arrange for interpreters. Judges can assist in this, by asking jail staff to advise if an interpreter is needed prior to a hearing. When documents are filed, clerks' offices can note on the file if an interpreter will be needed at any future scheduled hearings. While the court system has no control over court clerk's offices, all can collaborate on this endeavor.

Court administrators (county employees over which the judges have no supervisory authority) also have regular contact with the public and with offices such as child support offices and law enforcement. They can also convey the need of an interpreter to the appropriate personnel.

Since court staff and administrators are generally the first to interact with the public in a courthouse setting, they must make sure that the public is aware of their right to an interpreter and how they can request an interpreter. Signs and informational packets can provide this information and should be readily available to the public. The judges should assist, as reasonably possible, with helping to create solutions for these issues. There is a link on the AOC website for "Right to Interpreter" poster for all clerks, municipal judges, general sessions judges, trial court judges, and appellate court judges to use and put up in their courthouses, offices and courtrooms.

There continues to be collaboration between agencies and offices and a grass roots educational effort continues to get the information to those agencies and their staff that interact with LEP individuals in the court system. Presentations on interpreter issues have been made for attorneys, public defenders, district attorneys, judges and clerks.

D. Training of Staff

Judges should, as reasonably possible, assist in making sure that their assigned employed staff know the local policies and procedures for providing interpreters for LEP individuals for court hearings.

The AOC has provided informational cards for judges and clerks on finding interpreters and a short online video can be watched by staff called "Breaking Down the Language Barrier," a video training tool provided by the Department of Justice." <http://www.youtube.com/watch?v=qaVKy-2HWio&feature=related> Judges can require its staff to watch this video and be aware of interpreter issues.

VI. CONCLUSION

Tennessee is not a unified court system and the AOC therefore provides assistance in educating and advising judges, court staff and stakeholders in the judicial and legal system regarding court interpreter issues. The strategic plan therefore will be a continual review of this LAP.

This Language Access Plan and the policies and practices identified herein, are not intended to create any right to an administrative or judicial review or any substantive or procedural rights to be enforced against the State of Tennessee, its agencies, employees or any other persons.