

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

HOUSE BILL 1325

By: Representative Wright

## For An Act To Be Entitled

AN ACT TO AMEND THE PROCESS FOR APPOINTMENT,  
CERTIFICATION, AND REGULATION OF COURT INTERPRETERS;  
AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE PROCESS FOR APPOINTMENT,  
CERTIFICATION, AND REGULATION OF COURT  
INTERPRETERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-10-127 is repealed.

~~16-10-127. Court interpreters.~~

~~(a) The Director of the Administrative Office of the Courts shall establish a program to facilitate the use of interpreters and transliterators in all courts of the State of Arkansas.~~

~~(b)(1) The director shall prescribe the qualifications of and certify persons who may serve as certified interpreters and transliterators in all courts of the State of Arkansas in bilingual proceedings and proceedings involving the hearing impaired, whether or not also speech impaired.~~

~~(2) The director shall maintain a current registry of all interpreters and transliterators certified by the director and shall report annually to the Arkansas Supreme Court on the frequency of requests for and the use and effectiveness of the interpreters and transliterators.~~

~~(c) In all state court bilingual proceedings and proceedings involving the hearing impaired, whether or not also speech impaired, the presiding judicial officer, with the assistance of the director, shall utilize the~~



~~services of a certified interpreter or transliterator to communicate verbatim all spoken words or signs, illustrating alphabetical letters or words in American Sign Language, signed English, or spoken English.~~

~~(d) All state courts shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as interpreters or transliterators by the director in accordance with the certification program established pursuant to this section.~~

~~(e)(1) Whenever a judicial officer appoints a certified foreign language interpreter or transliterator from the registry to a criminal or civil case, upon the conclusion of the interpreter's or transliterator's services in the case the judicial officer may certify those services to the director upon a form prescribed by the Administrative Office of the Courts.~~

~~(2) The director is authorized to pay from funds specifically appropriated for this purpose the certified foreign language interpreter or transliterator for the interpreting services furnished to the court.~~

~~(f) As used in this section, unless the context otherwise requires:~~

~~(1) "Deaf person" means a person with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone; and~~

~~(2) "Director" means the Director of the Administrative Office of the Courts.~~

SECTION 2. Arkansas Code Title 16, Chapter 10, is amended to add a new subchapter to read as follows:

Subchapter 11 – Court Interpreters

16-10-1101. Purpose.

(a) The State of Arkansas requires that court proceedings be conducted in the English language under § 16-10-107.

(b) Recognizing that a person with limited English proficiency cannot fully participate in the legal process and exercise the rights afforded to him or her, a court shall appoint a qualified interpreter to assist a person with limited English proficiency in a court proceeding.

16-10-1102. Definitions.

As used in this subchapter:

(1) "Interpret" means to convey spoken English in a manner understood by a person who has limited English proficiency by using American Sign Language and transliteration, Communication Access Realtime Translation (CART) services or similar procedures, or a language in which the person is fluent, and to convey the communication made by that person into spoken English; and

(2) "Limited English proficiency" means either:

(A) The inability of a person to adequately understand or communicate effectively in English in a court proceeding because the person has not developed fluency in English; or

(B) The inability of a person to adequately hear, understand, or communicate effectively in English in a court proceeding due to a speech impairment, hearing loss, deafness, deaf-blindness, or other disability.

16-10-1103. Court interpreter for persons with limited English proficiency.

(a) A person with limited English proficiency who is a party to or a witness in a court proceeding is entitled to a qualified interpreter to interpret for the person throughout the court proceeding.

(b)(1) The Supreme Court shall administer an interpreter program to appoint and use interpreters in court proceedings and to ensure interpreter certification, continued proficiency, and discipline.

(2) Staff and administrative support required by the court relating to the program shall be provided by the Administrative Office of the Courts, and the program may include:

(A) Establishing and administering a comprehensive testing and certification program for foreign language interpreters;

(B) Establishing and adopting standards concerning written and verbal proficiency in English and the foreign language to be interpreted;

(C) Establishing and adopting recognized standards for interpreters for the deaf and hearing impaired, including without limitation certification by the Registry of Interpreters for the Deaf or similar registries;

(D) Conducting periodic examinations to ensure the availability of certified interpreters;

(E) Charging reasonable fees as necessary for testing and certification;

(F) Ensuring reciprocity of certification for interpreters from other jurisdictions provided that the criteria for certification in the foreign jurisdiction is comparable to that established by the office;

(G) Establishing a schedule of reasonable fees for services rendered by interpreters in court proceedings;

(H) Establishing a process to review and respond to allegations of misconduct by interpreters; and

(I) Addressing other matters relating to interpreters in the courts.

(c)(1) The General Assembly may appropriate to the office funds as necessary to establish a program to facilitate the use of interpreters and otherwise satisfy the requirements of this subchapter.

(2) Implementation of this subchapter is contingent upon the availability of appropriated funds to carry out its purposes.

(d)(1) With the support of the office, all court personnel shall make a reasonable effort to ensure public awareness of interpreter services.

(2) Clerks of court shall clearly publicize the availability of interpreter services.

16-10-1104. Appointment of interpreter.

(a) The Administrative Office of the Courts shall compile, maintain, and disseminate a certified registry of qualified interpreters for the courts.

(b) When an interpreter is requested or when the court determines that a party to or a witness in a court proceeding has limited English proficiency, a qualified interpreter shall be appointed under procedures adopted by the Supreme Court.

(c) An attorney, a clerk of court, employee or officer of a law enforcement agency, or a party to or a witness in a court proceeding shall notify the court as soon as the need for an interpreter is identified.

(d) If a qualified interpreter is not available through the office's registry, the court may appoint an interpreter qualified under procedures adopted by the court, and the interpreter shall take the oath under § 16-10-1105.

16-10-1105. Interpreter oath.

Before commencing his or her duties, an interpreter appointed under this subchapter shall take an oath in substantially the following form: “Do you [swear] [affirm] that you will make a true and impartial interpretation using your best skills and judgment in accordance with the standards and ethics of the interpreter profession and that you will abide by the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary, [so help you God][under the penalty of perjury]?”

16-10-1106. Replacement of interpreter.

(a) A court that appoints an interpreter shall dismiss the interpreter and obtain the services of a qualified interpreter under procedures adopted by the Supreme Court:

(1) If the interpreter fails to follow the standards prescribed by law or by the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary;

(2) If the interpreter is unable to effectively communicate; or

(3) For other reasons prescribed by the Supreme Court.

(b) A court that appoints an interpreter shall notify the Administrative Office of the Courts in writing if the court dismisses an interpreter, setting forth the reason for the dismissal.

16-10-1107. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter shall not be compelled to testify in a court proceeding as to any statements made by the person with limited English proficiency and interpreted by the interpreter when the person with limited English proficiency is engaged in a privileged communication recognized by the Arkansas Rules of Evidence.

16-10-1108. Compensation of interpreter.

(a) Except as provided in subsection (b) of this section, the payment of the cost of providing an interpreter appointed under this subchapter shall be the responsibility of the local government responsible for funding the court that has jurisdiction over the court proceeding.

(b) If an interpreter from the registry maintained by the

Administrative Office of the Courts is appointed by a court, the court may certify upon prescribed forms upon the conclusion of the interpreter's services those services to the office for payment from funds specifically appropriated for this purpose at the rate set by the office.

(c) A person with limited English proficiency who is a party to or witness in a court proceeding shall not be denied the services of an interpreter because he or she is unable to pay for the services.

(d) A defendant in a criminal proceeding shall not be required to pay a fee for the services of a court-appointed interpreter.

(e) If costs are assessed or collected by the court under the Arkansas Rules of Civil Procedure, the disposition of the costs shall be at the discretion of the court, and the court may order reimbursement to the local government responsible for funding the court or the Administrative Office of the Courts for their responsibilities under this subchapter.

SECTION 3. Arkansas Code § 16-64-111 is repealed.

~~16-64-111. Interpreters for persons with communication problems generally.~~

~~(a) Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons and who is a party to any civil proceeding or a witness therein shall be entitled to an interpreter to assist such person throughout the proceeding.~~

~~(b)(1) The interpreter may be retained by the party or witness or, if the person is unable to pay for an interpreter, may be appointed by the court before which the action is pending.~~

~~(2) If an interpreter is appointed by the court, the fee for the services of the interpreter shall be set by the court and shall be paid in such manner as the court may determine.~~

~~(3) If a certified foreign language interpreter from the roster is appointed by the court in a civil matter, the judge may certify the appointment to the Director of the Administrative Office of the Courts as provided in § 16-10-127(e)(1).~~

~~(c) Any court may inquire into the qualifications and integrity of any interpreter and may disqualify any person from serving for cause as an interpreter.~~

~~(d) Every interpreter for another person who is either a party or a witness in a court proceeding as referred to in this section shall take the following oath:~~

~~“Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret to ... the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court, so help you God (or under the pains and penalties of perjury)?”~~

SECTION 4. Arkansas Code § 16-64-112 is repealed.

~~16-64-112. Interpreters for the deaf.~~

~~(a) For the purpose of appointing an interpreter for a deaf person under § 16-64-111:~~

~~(1)(A) “Qualified interpreter” means an interpreter certified by the National Registry of Interpreters for the Deaf, Arkansas Registry of Interpreters for the Deaf, or, in the event an interpreter so certified is not available, an interpreter who is otherwise qualified.~~

~~(B)(i) Efforts to obtain the services of a qualified interpreter certified with a Legal Skills Certificate or a Comprehensive Skills Certificate will be made prior to accepting services of an interpreter with lesser certification.~~

~~(ii) No qualified interpreter shall be appointed unless the appointing authority and the deaf person make a preliminary determination that the interpreter is able to readily communicate with the deaf person and is able to accurately interpret the statements of the deaf person and interpret the proceedings in which a deaf person may be involved.~~

~~(iii) Every deaf person entitled to an interpreter under § 16-64-111 shall be entitled to a qualified interpreter as defined by this subsection.~~

~~(2)(A) “Oral interpreter” means a person who interprets language through facial and lip movements only and who does not use manual communication.~~

~~(B)(i) An oral interpreter shall be provided upon the request of a deaf person who does not communicate in sign language.~~

~~(ii) The right of a deaf person to an interpreter~~

~~may not be waived except by a deaf person who does not use sign language and who initiates the request for waiver in writing. The waiver is subject to approval of counsel, if existent, to that deaf person and is subject to approval of the appointing authority.~~

~~(b) Every deaf person whose appearance before a proceeding entitles him or her to an interpreter should notify the appointing authority of his or her need prior to any appearance and should request at that time the services of an interpreter. Where a deaf person reasonably expects the need for an interpreter to be for a period greater than a single day, he or she should notify the appointing authority and such notification shall be sufficient for the duration of his or her participation in the proceedings.~~

~~(c) An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of his deafness when the appointing authority has reason to believe that the person is not deaf.~~

~~(d) It shall be the responsibility of the appointing authority to channel requests for qualified interpreters through:~~

~~(1)(A) The Arkansas Registry of Interpreters for the Deaf;~~

~~(B) The Department of Health and Human Services; or~~

~~(C) The University of Arkansas at Little Rock Interpreter Training Program; or~~

~~(2) In the alternative, any community resource wherein the appointing authority or the deaf person is knowledgeable that such qualified interpreters can be found.~~

~~(e) Before a qualified interpreter participates in any proceedings subsequent to an appointment under the provisions of this section, the interpreter shall make an oath or affirmation that the interpreter will make a true interpretation in an understandable manner to the deaf person for whom he or she is appointed and that such interpreter will interpret the statements of the deaf person desiring that statements be made, in the English language to the best of such interpreter's skill and judgment.~~

~~(f) The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter so indicates.~~

~~(g) Any and all information that the interpreter gathers, learns from, or relays to the deaf person or person who is unable to communicate in English pertaining to any administrative, civil, or criminal proceeding shall~~

~~at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person or person who is unable to communicate in English desires that such information be communicated to other persons.~~

~~(h) An interpreter appointed under the provisions of this section shall be entitled to a reasonable fee for his or her services. The fee shall be in accordance with standards established by the Arkansas Registry of Interpreters for the Deaf, in addition to actual expenses for travel and transportation. When the interpreter is appointed by a court, the fee shall be paid out of general county funds and, when the interpreter is otherwise appointed, the fee shall be paid out of funds available to the appointing authority.~~

SECTION 5. Arkansas Code Title 16, Chapter 81, Subchapter 1, is amended to add a new section to read as follows:

16-81-117. Interpreters for deaf persons who are arrested.

(a) If a person who is deaf is arrested for a criminal offense and taken into custody, the arresting law enforcement officer and his or her superiors shall procure a qualified interpreter in order to properly interrogate the deaf person and to interpret the person's statement.

(b) If a qualified interpreter is not present when a deaf person makes a statement while in custody for an arrest, the statement is not admissible in court.

SECTION 6. Arkansas Code § 16-89-104 is repealed.

~~16-89-104. Interpreters in criminal actions generally.~~

~~(a) Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons and who is a defendant in any criminal action or a witness therein shall be entitled to an interpreter to aid the person throughout the proceeding.~~

~~(b)(1) An interpreter may be retained by the party or witness or, if the person is unable to pay for an interpreter, may be appointed by the court before which the action is pending and shall be appointed by the court before which the action is pending if the person is a defendant in the criminal action.~~

~~(2) If an interpreter is appointed by the court, the fee for the services of the interpreter shall be set by the court and shall be paid in the manner as the court may determine, except that an acquitted defendant shall not be required to pay any fee for the services of a court-appointed interpreter.~~

~~(3) If a certified foreign language interpreter from the roster is appointed by the court in a criminal matter, the judge may certify the appointment to the Director of the Administrative Office of the Courts as provided in § 16-10-127(c)(1).~~

~~(c) Any court may inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter.~~

~~(d) Every interpreter for another person who is either a party or a witness in a court proceeding as referred to in this section shall take the following oath:~~

~~“Do you solemnly swear (or affirm) that you will justly, truly and impartially interpret to . . . . the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court, so help you God (or under the pains and penalties of perjury)?”~~

SECTION 7. Arkansas Code § 16-89-105 is repealed.

~~16-89-105. Interpreters in criminal actions—Interpreters for the deaf.~~

~~(a) Every deaf person entitled to an interpreter under § 16-89-104 shall be entitled to a qualified interpreter as defined by this section.~~

~~(b) For the purpose of appointing an interpreter for the deaf under § 16-89-104:~~

~~(1)(A) “Qualified interpreter” means an interpreter certified by the National Registry of Interpreters for the Deaf or the Arkansas Registry of Interpreters for the Deaf or, in the event an interpreter so certified is not available, an interpreter who is otherwise qualified.~~

~~(B) Efforts to obtain the services of a qualified interpreter certified with a legal skills certificate or a comprehensive skills certificate will be made prior to accepting services of an interpreter with lesser certification.~~

~~(C) No qualified interpreter shall be appointed unless the appointing authority and the deaf person make a preliminary determination that the interpreter is able to readily communicate with the deaf person and is able to accurately interpret the statements of the deaf person and interpret the proceedings in which a deaf person may be involved; and~~

~~(2)(A) "Oral interpreter" means a person who interprets language through facial and lip movements only and who does not use manual communication.~~

~~(B) An oral interpreter shall be provided upon the request of a deaf person who does not communicate in sign language.~~

~~(C) The right of a deaf person to an interpreter may not be waived except by a deaf person who does not use sign language and who initiates the request for waiver in writing. A waiver is subject to approval of counsel to the deaf person, if existent, and is subject to approval of the appointing authority.~~

~~(c) In the event a person who is deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer and his or her superiors shall procure a qualified interpreter in order to properly interrogate the deaf person and to interpret the person's statement. No statement taken from the deaf person before an interpreter is present may be admissible in court.~~

~~(d) Every deaf person whose appearance before a proceeding entitles him or her to an interpreter should notify the appointing authority of his or her need prior to any appearance and should request at that time the services of an interpreter. Where a deaf person reasonably expects the need for an interpreter to be for a period greater than a single day, he or she should notify the appointing authority and the notification shall be sufficient for the duration of his or her participation in the proceedings.~~

~~(e) An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of his or her deafness when the appointing authority has reason to believe that the person is not deaf.~~

~~(f) It shall be the responsibility of the appointing authority to channel requests for qualified interpreters through:~~

~~(1) The Arkansas Registry of Interpreters for the Deaf;~~

~~(2) The Department of Health and Human Services, Office for the~~

~~Deaf and Hearing Impaired;~~

~~(3) The University of Arkansas at Little Rock Interpreter Training Program; or~~

~~(4) Any community resource wherein the appointing authority or the deaf person is knowledgeable that qualified interpreters can be found.~~

~~(g) Before a qualified interpreter participates in any proceedings subsequent to an appointment under the provisions of this section, the interpreter shall make an oath or affirmation that the interpreter will make a true interpretation in an understandable manner to the deaf person for whom he or she is appointed and that the interpreter will interpret the statements of the deaf person desiring that statements be made in the English language to the best of the interpreter's skill and judgment.~~

~~(h) The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter so indicates.~~

~~(i) Any and all information that the interpreter gathers, learns from, or relays to the deaf person or person who is unable to communicate in English pertaining to any administrative, civil, or criminal proceeding shall at all times remain confidential and privileged on an equal basis with the attorney-client privilege, unless such deaf person or person who is unable to communicate in English desires that such information be communicated to other persons.~~

~~(j)(1) An interpreter appointed under the provisions of this section shall be entitled to a reasonable fee for the services.~~

~~(2) The fee shall be in accordance with standards established by the Arkansas Registry of Interpreters for the Deaf, in addition to actual expenses for travel and transportation.~~

~~(3)(A) When the interpreter is appointed by a court, the fee shall be paid out of general county funds.~~

~~(B) When the interpreter is otherwise appointed, the fee shall be paid out of funds available to the appointing authority.~~