

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1325

5 By: Representative Wright
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE PROCESS FOR APPOINTMENT,
9 CERTIFICATION, AND REGULATION OF COURT INTERPRETERS;
10 AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO AMEND THE PROCESS FOR APPOINTMENT,
14 CERTIFICATION, AND REGULATION OF COURT
15 INTERPRETERS.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

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 Arkansas Code § 16-10-127 is repealed.

22 ~~16-10-127. Court interpreters.~~

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

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

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

34 ~~(c) In all state court bilingual proceedings and proceedings involving~~
35 ~~the hearing impaired, whether or not also speech impaired, the presiding~~
36 ~~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 (1) "Interpret" means to convey spoken English in a manner
 2 understood by a person who has limited English proficiency by using American
 3 Sign Language and transliteration, Communication Access Realtime Translation
 4 (CART) services or similar procedures, or a language in which the person is
 5 fluent, and to convey the communication made by that person into spoken
 6 English; and

7 (2) "Limited English proficiency" means either:

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

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

15
 16 16-10-1103. Court interpreter for persons with limited English
 17 proficiency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21
 22 16-10-1104. Appointment of interpreter.

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

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

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

33 (d) If a qualified interpreter is not available through the office's
 34 registry, the court may appoint an interpreter qualified under procedures
 35 adopted by the court, and the interpreter shall take the oath under § 16-10-
 36 1105.

1
2 16-10-1105. Interpreter oath.

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

10
11 16-10-1106. Replacement of interpreter.

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

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

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

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

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

23
24 16-10-1107. Confidential communications in presence of interpreter.

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

30
31 16-10-1108. Compensation of interpreter.

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

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

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

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

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

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

15
 16 SECTION 3. Arkansas Code § 16-64-111 is repealed.

17 ~~16-64-111. Interpreters for persons with communication problems~~
 18 ~~generally.~~

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

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

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

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

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

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

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

10
 11 SECTION 4. Arkansas Code § 16-64-112 is repealed.

12 ~~16-64-112. Interpreters for the deaf.~~

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

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

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

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

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

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

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

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

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

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

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

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

18 (1)(A) The Arkansas Registry of Interpreters for the Deaf;
19 (B) The Department of Health and Human Services; or
20 (C) The University of Arkansas at Little Rock Interpreter
21 Training Program; or

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

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

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

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

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

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

13
 14 SECTION 5. Arkansas Code Title 16, Chapter 81, Subchapter 1, is
 15 amended to add a new section to read as follows:

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

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

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

24
 25 SECTION 6. Arkansas Code § 16-89-104 is repealed.

26 ~~16-89-104. Interpreters in criminal actions generally.~~

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

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

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

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

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

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

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

21
 22 SECTION 7. Arkansas Code § 16-89-105 is repealed.

23 ~~16-89-105. Interpreters in criminal actions—Interpreters for the~~
 24 ~~deaf.~~

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

27 ~~(b) For the purpose of appointing an interpreter for the deaf under §~~
 28 ~~16-89-104:~~

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

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

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

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

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

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

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

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

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

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

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

36 ~~(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.~~

APPROVED: 03/01/2013