

Appendix A

STATE INTERPRETERS LAWS—AN ANALYSIS

INTRODUCTION

During the 1970s and 1980s, laws and rules for court procedure affecting a D/deaf person's right to access the judicial system were implemented all across the country. Many of them fit into already existing laws providing for interpreters of foreign languages while others were written expressly for D/deaf people. This document provides an analysis of twenty such laws. It includes states which are traditionally thought of as primarily rural and those with one or more large metropolitan area. The purpose of this document is to allow students of legal interpretation to recognize and understand what constitutes a law which furthers the administration of justice and what does not. Its purpose is also to assist students in better understanding what difficulties they may encounter when a D/deaf person needs access to a particular arena but law does not provide for interpreters in that arena.

Certain characteristics, or lack thereof, appear or do not appear so frequently as to make mentioning them in an introductory text the most expedient means of addressing them. The following characteristics were not seen nor were they lacking in every law; the student is encouraged to look closely at the laws for the characteristics which define each law.

These are the common characteristics found or lacking in twenty laws pertaining to the provision of interpretation services for D/deaf individuals:

1. RID certification as a minimum requirement for interpreting in judicial and quasi-judicial matters is seen in only a few laws. Most laws do not mention RID, and some laws offer RID simply as one means of locating qualified interpreters. Most laws require that the individual providing interpretation services be qualified to communicate with the D/deaf individual who is a party to a court matter. In other words, in most cases, there are no provisions for measuring what qualified means.
2. In only the rarest of cases are relay (called "intermediary" in these laws) interpreters required and/or allowed. Some laws are written in such a way that one could imagine the court allowing a relay interpreter to assist were a proper argument for such made. Without, a specific mandate, however, the decision to allow or disallow a relay interpreter is left to the discretion of the court, no matter how beneficial the interpreter's assistance might be.
3. Not a single state requires that interpreters be provided for D/deaf people (or other linguistic minority individuals/ as the case may be) in court support services, such as meetings with a probation or parole officer; meetings of a community-based resolution committee, such as a juvenile conference committee; during court-ordered psychiatric evaluations; or for individuals attending drunk-driver schools. As the courts look more toward arbitration and less to trial as a means of settling disputes, it becomes crucial that D/deaf people have access to these arenas.
4. In many, but not all, laws, interpreters are required at the time of interrogation. Lack of this provision is a grave oversight and may result in a D/deaf person providing a statement and/or confessing to a crime when it is not in his/her best interest to do so. Since arrest may be the point of entrance into the judicial system for some D/deaf people, it is critical that qualified interpreters be provided for the rendering of the Miranda Warnings and the taking of statements.
5. Most laws use the term "shall" when mandating that courts provide interpretation ever, use the term "may". "Shall" indicates that the courts (and other bodies named in any given law) have no choice in whether or not to provide interpreters. "May" provides the court with the option of allowing or disallowing the use of interpreters. It follows, then that courts subject to the stronger "shall" will likely provide interpretation services on a more consistent basis than those which are not.

6. Many state statutes do not specifically name municipal courts as mandated to provide interpreters, although one could argue that for those statutes which provide interpreters anytime a D/deaf person appears in any judicial proceeding that municipal courts would be included. Still, without being named in legislation, the courts could disallow interpreters in such courts or they could be provided at the discretion of the court. This could easily allow for the inconsistent and uneven provision of services. Since most people encounter the judicial system at this level of court, it is imperative that qualified interpreters be provided here. The vast majority of laws do not provide for interpreters for jurors or do not specifically name jurors as those with a right to interpreter services. In some states (e.g., New Jersey) the courts have simply made it a habit to allow interpreters for D/deaf jurors. In states where the 'good-will' of the Judiciary allows for interpreters for jurors but where state law does not mandate it, it remains to be seen in times of fiscal turmoil how frequently jurors will be denied their civil duty because interpreters are "too expensive."
8. In virtually all courts (and other bodies named in any given law) the appointing authority is the judge, magistrate, commissioner, chairperson of a board, or other official despite that person's ability to assess the technical and professional competence of an interpreter. Several states require the appointing authority to assure himself/herself that the interpreter is able to effectively communicate with the D/deaf person before officially appointing the interpreter. In at least one state, the power to appoint has been officially transferred from the court to the Commission on the Deaf which likely has staff who are able to better assess an interpreter's technical and professional competence than are court personnel.
9. Victims are rarely named as people whose rights to an interpreter in court or with the police are secured. In only one of these state laws is the victim actually named (see Connecticut). This is a serious oversight and could lead to a lack of service for victims of serious crimes such as rape or assault.
10. Most laws do not outline payment to interpreters, except to say that "adequate" or "reasonable" compensation shall (or may) be provided. In the laws which do delineate interpreter fees, gross underpayment is the norm (see Missouri and Wisconsin). By not establishing fees under the law, states are able to adjust fees according to trends and in consultation with professional organizations of interpreters, e.g., the state RID chapter.
11. Specific provisions for oral interpreters are rarely made but one could argue that deaf people who do not use American Sign Language or a manual code for English are, in fact, still deaf, and where D/deaf people are allowed interpreter services, they would qualify for the services of an oral interpreter.
12. Unfortunately/ in nearly all laws, D/deaf people are defined by their audiological state instead of by their need for interpreters who can use their language, that is/ ASL. In fact, the terms deaf-mute, deaf and mute, deaf and dumb, and hearing impaired are still used with regularity. While the former are anachronistic and offensive to the Deaf community, the latter— hearing impaired— may describe some deaf people who access the judicial system. However, the term hard of hearing may more appropriately describe those who are not members of the Deaf community and who do not need the services of ASL/English interpreters but who need transliteration services instead. Laws could be amended to accommodate the needs of Deaf people who use ASL and of people who define themselves by their audiological state. Finally, although the state of Tennessee was not analyzed for the purposes of this document, it is noteworthy. Tennessee is the only state of these twenty (and many more which were read) which recognizes by statute American Sign Language as the language of Deaf people. It's a step in the right direction

ALASKA

Strengths: Provides for payment in criminal

matters and coroner's inquests; provides for interpreter to be sworn under rules of civil procedure.

Weaknesses: Does not provide for RID certified or relay interpreters; does not include municipal courts, grand jury proceedings, mental commitment hearings, or quasi-judicial proceedings; in civil matters, Deaf persons may be assessed interpreter costs if court deems litigation to be frivolous; court sets actual interpreting fee at \$30.00/hr. and waiting time at \$15.00/hr.; court uses its own discretion on whether or not to pay maximum fee of \$30.00 and is compelled not to do so unless interpreter has special training beyond bilingual abilities; does not provide for travel expenses.

ARIZONA

Correction: Sec. 36-1946 should read interpreters for the deaf; duties of council.

Strengths: Provides for interpreters in quasi-judicial proceedings, grand jury proceedings, and during taking of statements by law enforcement officials; provides for oath when interpreters appear before boards or commissions; authorizes Council to approve certificates of competency issued by any public or private organization or institution which council finds meets standards necessary to achieve purposes of Sec. 12-242.

Weaknesses: Although law authorizes council to approve certificates of competency, which could include RID certification, it does not specifically name possession of RID certification as minimum requirement for competency; relay interpreters not specifically named as provided; specifically provides interpreters only for proceedings in which sanction-related offenses are addressed; Deaf parents of juveniles not specifically named; does not provide for privilege; authorizes appointing authority to set fees but does not provide for waiting, travel or other expenses.

CALIFORNIA

Addition: Re payment in civil matters—paid by litigants as other court costs and as jury costs are paid.

Strengths: Provides for RID certification;

provides for relay interpreters; provides for interpreters at interrogation; provides for interpreters for Deaf jurors at no cost to jurors (with provisions to move juror to another court if interpreter cannot be located in jurisdiction [new, re litigation]); case law (pg. 22, #14) allows for leading questions—this precedent may assist when leading questions are only means of allowing minimal language competent person to be 'present' at his or her trial; provides for review of interpreter skills (full-time court employees not specifically named); Standards of Judicial Administration outline expectations of interpreter performance; provides for keeping of statistics on interpretation services; provides for "reasonable sum" to be paid interpreters, as well as travel costs and incidentals as paid to interpreters of other languages; Los Angeles Superior Court provides \$110.00/half day fee for interpreters.

Weaknesses: Sets fee of interpreters at grand jury hearings at \$35.00/day; Los Angeles Superior Court limits fee for full-day's service to \$166.00 regardless of complexity of proceedings and/or preparation necessary to provide appropriate services; allows for interpreters with NRID state affiliate certificates of competence to provide in-court service.

CONNECTICUT

Strengths: Provides for RID certified interpreters; provides for interpreters in criminal and civil matters when Deaf person is party or witness; provides for interpreters in grand jury and quasi-judicial

proceedings; provides interpreters for Deaf parent(s) of juvenile; specifically names victim as having right to interpreter; disallows employee(s) of agency (e.g., police officer) to provide interpretation services; gives power to appoint interpreters to Commission—this removes burden from (court's) appointing authority who, in general, has no knowledge of interpretation standards; provides for extensive access to human service agencies via interpreter services; provides for oath in criminal and civil matters; provides for monetary compensation and actual travel costs and incidentals.

Weaknesses: Does not specifically name relay interpreters as allowed; provides for non-certified interpreters; does not provide for privilege for interpreter.

Comment: Commission pays interpreters and is reimbursed by courts; this may result in more timely payment for interpreters than if they were being paid directly by courts—may be seen as a negative or positive by interpreters subject to this procedure.

Note: Overall exemplary law with minor flaws which could be removed via administrative directive or rules for court procedure.

DISTRICT OF COLUMBIA

Addition: 1. Superior Court of District of Columbia, Court Rules 28(b) —Court appoints interpreter of its own selection and fixes reasonable compensation. 2.

Repayment: in civil matters/ court fixes fee—funds are paid out of funds by law or by one or more of parties, as directed by court/ or may be ultimately taxed as costs. In criminal matters/ court fixes reasonable compensation to be paid by law or government/ as court directs.

Strengths: Provides for interpreters in virtually all legal proceedings; provides for payment of interpreter fees.

Weaknesses: Does not provide for RID certified interpreters; does not name relay interpreters; does not provide for interpreters during interrogation; does not provide for travel costs and/or subsistence costs; payment of interpreters by litigants in civil matters may put Deaf person and interpreter in compromising position; in contested cases before an agency. Deaf person must apply to mayor or agency for interpreter services; does not provide privilege for interpreters.

FLORIDA

Additions: Re, grand jury. Sec. 905.27—Not to disclose testimony; Sec. 905.26— Not to disclose finding. Re, criminal. Sec.839.24—Penalty for failure to perform duty required of officer.

Strengths: Provides for interpreters in all judicial proceedings, including grand jury hearings; provides for interpreters at interrogation; provides for RID certified interpreters; provides for oath; provides for privilege; provides for reasonable fee and actual travel expenses in criminal matters/- requests notification for need of interpreter but does not consider lack of request as waiver of need; provides second degree misdemeanor sanction against interpreters (and other court officers) who fail to perform duties as required.

Weaknesses: Does not specifically name relay interpreters; allows for interpreters with Florida RID certificates of competence to interpret in court; may require Deaf person to provide proof of deafness; in civil matters/interpreter fees may be taxed as costs.

ILLINOIS

Strengths: Provides for interpreters in virtually all judicial proceedings; provides for reasonable fee; provides for oath "when necessary."

Weaknesses: Does not require RID certified interpreters or relay interpreters; does not provide for interpreter at interrogation; fees paid to interpreter at discretion of court; if witness is "deaf but not mute/ it is proper to hand him written question after showing them to opposing counsel"—such a provision could interfere with provision of interpretation services for Deaf individuals who wish to speak for themselves (pg.86); case law repeatedly refers to Deaf people as deaf-mutes.

Note: Significant case law worth reading.

INDIANA

Strengths: Provides for interpreters in civil, administrative/ and grand jury proceedings; provides for oath.

Weaknesses: Does not provide for RID certified interpreters or relay interpreters; does not provide for interpreters at interrogation; does not provide for privilege; provides that in criminal matters, the court may (versus shall) appoint an interpreter of its own selection and may fix reasonable compensation; in civil and administrative hearings/ parties may retain their own interpreters or be appointed by the court—if appointed by the court, interpreters will be compensated in manner determined by the court; in criminal matters/ interpreters may be paid out of funds provided by law or by one or more of the parties and may be taxed ultimately as costs, in the discretion of the court.

LOUISIANA

Strengths: Provides for interpreters in virtually all judicial proceedings; provides for relay interpreters; provides for oath; provides for privilege; provides for "reasonable fee" plus compensation for waiting time and travel expenses.

Weaknesses: Does not provide for RID certified interpreters; does not provide for interpreters at interrogation; provides that interpreters at licensing or pre-employment examinations of state or its agencies be paid \$15.00 for the first hour and \$5.00 for each subsequent hour/ up to a maximum of eight hours in a calendar day.

Comment: Provides for visual recording of proceeding on motion of appointing authority or parties. This may be seen as positive or negative from the perspective of various participants in proceeding. It should be seen as positive from interpreter's perspective as providing proof of appropriate interpretation services.

MASSACHUSETTS

Additions: Rule 41, Interpreters and Experts; Rule 43 Evidence; Mass Gen. Laws Ann. Ch. 218, Sec. 67, District Courts.

Strengths: Provides for interpreters in virtually all judicial and quasi-judicial matters, including potential provision in municipal courts (judges may appoint); disallows interpreter from making ultimate decision on admissibility of non-English speaking witness's testimony (case law); specifically provides for Deaf parents of juveniles; provides for interpreters at interrogation; provides for privilege; provides for "reasonable fee," actual expenses/ and ordinary living expenses commensurate with reimbursement to commonwealth employees; defines right to "be present" at trial as participating meaningfully in trial; recognizes inclusion of interpreter as benefit not only to Deaf person but to court as well; does not exclude non-indigent litigants from receiving services of court appointed interpreters.

Weaknesses: Does not require RID certified interpreters.

Comment: Rule 41 outlines expectations of professional behavior.

Note: Overall exemplary law with flaw which could be removed via administrative

directive or rules for court procedure.

MISSOURI

Update: Re payment (491.300, General Provisions), "Interpreters and translators shall be allowed fees for their services/ in addition to the compensation and mileage allowed witnesses in civil cases, as follows: witness testimony: \$35.00/witness.

Strengths: Provides for interpreters at involuntary detention or arrest and during interrogation; provides for interpreters at any judicial or administrative proceeding where D/deaf person appears as witness or party to a matter; provides for interpreters and oath at grand jury proceedings; provides for "reasonable fee" and necessary travel expenses; provides for privilege; financial condition of litigant not a factor in providing interpreter services during preparation for a proceeding; no employee of any political subdivision (e.g., court clerk, bailiff) can be used as an interpreter unless qualified; provides for privilege.

Weaknesses: Explicitly excludes municipal court procedures in definition of "judicial or administrative proceeding"—since municipal court is point of entry to judicial system for most people, this exclusion constitutes a major flaw in this legislation; does not require RID certification; does not provide for relay interpreters; payment to interpreters is same as that to witnesses plus \$35.00 for the taking of each witness's testimony (491.300).

NEW JERSEY

Correction: N.J.S.A. 34.169.8-17, An Act Providing for Interpreters for the Hearing Impaired in Official Proceedings. **Strengths:** Provides for RID certified interpreters and RID certified intermediary interpreters; provides for interpreters in virtually all judicial and quasi judicial matters; provides for

interpreters at interrogation; provides that Deaf person who has been arrested and is eligible for release cannot be held pending arrival of interpreter; provides for oath; provides for "reasonable" fee for services, as well as waiting and travel expenses; provides for privilege.

Weaknesses: Statute states that a qualified interpreter shall be appointed to assist a Deaf person throughout the proceedings and in assistance with counsel (34:1-69.10); this arbitrary wording could be read to mean at any stage prior to entering a court-room or only when in court.

Comment: 34:1-69.10 (c) (3) states that provisions of this statute do not apply when a Deaf person is arrested on suspicion of drunk driving. This omission exists because were arresting officers to wait for the arrival of an interpreter before administering the breathalyzer test, the suspect's blood-alcohol level could change by the time the interpreter arrived.

NEW MEXICO

Addition: Re payment—payment is made by appointing authority at fixed rate reflecting current approved fee schedule of the NM Department of Vocational Rehabilitation or payment is negotiated privately with interpreter

Strengths: Provides for interpreters in virtually all judicial and quasi-judicial proceedings; RID certification officially recognized; provides for oath; provides for privilege; fees of NM DVR may be more appropriate than what court would set.

Weaknesses: Does not specifically provide for relay interpreters; allows for non-certified interpreters; does not provide for interpreter at interrogation; does not specifically provide for reimbursement of travel or subsistence expenses.

NEW YORK

Clarification: NYA.P.A., Sec. 301; NY Exec., Sec. 259(1), re parole, makes no direct reference to Deaf people; Sec. 927, unable to locate by this cite.

Strengths: Provides for interpreters in virtually all criminal and civil procedures and during arbitration in which referee is present (e.g., auto arbitration); court pays "reasonable fee."

Weaknesses: Does not require RID certification; does not provide for relay interpreters; does not provide for interpreters at interrogation; does not specifically provide for reimbursement of travel and subsistence expenses; does not provide for oath; does not provide for privilege.

NORTH CAROLINA

Strengths: Provides for interpreters in virtually all judicial and quasi-judicial proceedings; specifically provides for Deaf parents of a juvenile; provides for interpreters in administrative hearings at both state and municipal level; provides for oral interpreter; provides for interpreter at interrogation; provides for oath; provides for

privilege; provides that Deaf person who has been apprehended and is eligible for release cannot be held pending arrival of interpreter; specifically provides for interpreter when Deaf person appears as witness at hearing of legislative committee or subcommittee or legislative research or study committee authorized by the General Assembly; provides for a "reasonable fee," waiting time/ travel, and subsistence expenses—appointing authority considers fee schedule of Department of Human Resources.

Weaknesses: Does not require RID certification; does not specifically name relay interpreters; provides that Deaf person can waive interpreter and select interpreter of own choosing if no court appointed interpreter can communicate with him/her—interpreter chosen by Deaf person does not have to meet standards set by statute; in consultation with attorney or appointing authority/ Deaf person may waive interpreter (reason not outlined as above) and/ at his/her own expense/ bring in interpreter who may or may not meet the standards set forth in the legislation.

Note: Overall exemplary legislation with minor flaws which could be removed via administrative directive or rules of court procedure.

NORTH DAKOTA

Strengths: Requires RID certified interpreters; provides for interpreters for Deaf person who is principal party of interest in any judicial or administrative proceeding; provides for interpreter at interrogation; provides for oath; provides for privilege; provides for "reasonable" compensation to be set by appointing authority, as well as

reimbursement for travel expenses.

Weaknesses: Does not specifically provide for relay interpreters

Comment: On motion of appointing authority or parties, testimony of Deaf witness and interpretation thereof may be videotaped.

OREGON

Strengths: Specifically provides for interpreters at grand jury and administrative proceedings; provides for interpreters at interrogation; provides for interpreters for public defender as necessary; payment to interpreters working with a public defender is made in the same manner as are other payments of state expenses to state employees.

Weaknesses: Does not require RID certified interpreters; does not provide for relay interpreters; defines Deaf people as "handicapped;" does not address issue of payment to interpreters in any meaningful way; Deaf person must prove inability to obtain and pay for interpreter before interpreter will be provided by appointing authority.

language" (ASL not specifically named); provides for "reasonable fee" after court considers recommended fee schedule of State Commission for the Deaf—includes actual travel, lodging, and meal expenses interpreter may incur, to be paid at same rate applicable to state employees.

Weaknesses: Does not require RID certification; when Deaf person takes examination for state employment or licensing and interpreter is present, interpreter is paid \$15/hour for first hour and \$5.00/ hour for each subsequent hour to a maximum of eight hours in a calendar day.

Comment: provides that interpreters are subject to a state board evaluation. Depending on the validity of the evaluation, this may be seen positively or negatively by those subject to the procedure

TEXAS

Strengths: Provides for relay interpreters (although provision is not specific to working with Deaf people); provides for interpreters during taking of depositions; specifically provides for interpreters at municipal and domestic relations courts; provides for interpreters at interrogation and requires visual recording of interrogation; provides for interpreters in criminal and civil procedures; provides for oath; recognizes that Deaf people may use language other than "sign

WASHINGTON

Strengths: Provides for interpreters in virtually all judicial and quasi-judicial matters; provides for interpreter at interrogation; assumes need for interpreter whenever written waiver is not presented; in criminal proceedings, state provides "adequate" compensation and reimbursement for actual expenses; provides for oath.

Weaknesses: Does not require RID

certification; does not specifically name relay interpreters; does not provide for privilege; in legal proceedings other than criminal, cost of interpreter services are borne by Deaf person, unless indigent; cost of providing interpreter may be a taxable cost of any proceeding in which costs are ordinarily taxed.

hearings; does not provide for an oath; does not provide for privilege; does not provide for interpreters at interrogation; does not specifically name civil and criminal courts; regarding payment to interpreters—at justice of the peace courts: \$4.00/day (Sec.885.05); at municipal court, arbitration, board, or committee: \$10/half day or such higher fees as the municipality or county board may establish; at any other court: \$35.00/half day. Interpreter is entitled to fees only for the time he or she is in actual attendance (not clearly defined); reimbursement (instate travel) at \$0.20/mile going from and returning to residence.

Note: Overall an exceedingly ambiguous and poorly written law with the potential for interrupting or denying service to Deaf people and the court.

WISCONSIN

Addition: Wis. Stat. Ann./ Sec. 905.015, Privilege.

Strengths: Provides for interpreters at justice of the peace, and in county, municipal, and probate courts; provides for interpreters in mental commitment hearings; provides for privilege

Weaknesses: Does not require RID certification; does not provide for relay interpreters; does not specifically name administrative or other quasi-judicial