

Following is the portion of Act 172 as it applies to Title 42. The first three sections pertaining to Title 2 are omitted.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

Act 172 of 2006

AN ACT

Amending Titles 2 (Administrative Law and Procedure) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for court and administrative proceeding interpreters; and repealing related provisions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 4. Title 42 is amended by adding a chapter to read:

CHAPTER 44

COURT INTERPRETERS

Subchapter

- A. General Provisions
- B. Court Interpreters for Persons With Limited English Proficiency
- C. Court Interpreters for Persons Who are Deaf

SUBCHAPTER A

GENERAL PROVISIONS

Section

4401. Legislative findings and declaration.

4402. Definitions.

§ 4401. Legislative findings and declaration.

It is hereby declared to be the policy of this Commonwealth to secure the rights, constitutional and otherwise, of persons who because of a non-English speaking cultural background or who because of an impairment of hearing or speech are unable to understand or communicate adequately in the English language when they appear in court or are involved in judicial proceedings. It is the intent of this chapter to provide for the certification, appointment and use of interpreters to secure the rights of persons with

limited English proficiency and persons who are deaf or hearing impaired in all judicial proceedings.

§ 4402. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative proceeding." Any proceeding other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law or in which law or regulation is particularized in application to individuals. The term includes an appeal as defined in 2 Pa.C.S. § 101 (relating to definitions).

"Certified interpreter." A person who:

- (1) is readily able to interpret; and
- (2) is certified by the Court Administrator in accordance with either Subchapter B (relating to court interpreters for persons with limited English proficiency) or Subchapter C (relating to court interpreters for persons who are deaf).

"Court Administrator." The Court Administrator of Pennsylvania.

"Deaf." An impairment of hearing or speech which creates an inability to understand or communicate the spoken English language.

"Direct victim." A direct victim as defined in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

"Immediate family member." A spouse, parent or child.

"Interpret." Either one of the following:

- (1) For purposes of Subchapter B (relating to court interpreters for persons with limited English proficiency), to convey spoken and written English into the language of the person with limited English proficiency and to convey oral and written statements by the person with limited English proficiency into spoken English.
- (2) For purposes of Subchapter C (relating to court interpreters for persons who are deaf), to convey spoken English in a manner understood by the person who is deaf through, but not limited to, American Sign Language and transliteration or the use of Computer-Aided Real-Time Captioning

(CART) or similar procedure, and to convey the communications made by the person who is deaf into spoken English.

"Interpreter." Includes both a certified interpreter and an otherwise qualified interpreter.

"Judicial proceeding." An action, appeal or proceeding in any court of this Commonwealth.

"Limited ability to speak or understand English." The ability to speak exclusively or primarily a language other than English and the inability to sufficiently speak or understand English.

"Otherwise qualified interpreter." A person who:

- (1) For purposes of Subchapter B (relating to court interpreters for persons with limited English proficiency):
 - (i) is readily able to interpret; and
 - (ii) has read, understands and agrees to abide by the code of professional conduct for court interpreters for persons with limited English proficiency as established by the Court Administrator in accordance with Subchapter B.
- (2) For purposes of Subchapter C (relating to court interpreters for persons who are deaf):
 - (i) is readily able to interpret;
 - (ii) is certified by the National Association of the Deaf, the Registry of Interpreters for the Deaf or similar registry; and
 - (iii) has read, understands and agrees to abide by the code of professional conduct for court interpreters for persons who are deaf as established by the Court Administrator in accordance with Subchapter C.

"Person who is deaf." A principal party in interest or a witness who is deaf.

"Person with limited English proficiency." A principal party in interest or a witness, who has limited ability to speak or understand English.

"Presiding judicial officer." Includes a judicial officer as defined in section 102 (relating to definitions).

"Principal party in interest." A person involved in a judicial proceeding who is a named party, defendant or direct victim in a criminal proceeding or a proceeding pursuant to Chapter 63 (relating to juvenile matters), will be bound by the decision or action or is foreclosed from pursuing that person's rights by the decision or action which may be taken in the judicial proceeding.

"Transliteration." To convey spoken or written English in an English-based sign system and the process of conveying an English-based sign system in spoken or written English.

"Witness." A person who testifies in a judicial proceeding.

SUBCHAPTER B
COURT INTERPRETERS FOR PERSONS WITH LIMITED ENGLISH
PROFICIENCY

Section

4411. Duties of Court Administrator.

4412. Appointment of interpreter.

4413. Replacement of interpreter.

4414. Oath.

4415. Confidential communications in presence of interpreter.

4416. Cost of providing interpreter.

4417. Funding.

§ 4411. Duties of Court Administrator.

- (a) Interpreter program.--The Court Administrator may establish a program to appoint and use certified interpreters in judicial proceedings. The program established by the Court Administrator to certify interpreters may include:
- (1) establishing and administering a comprehensive testing and certification program for interpreters;
 - (2) establishing and adopting standards of proficiency, written and oral, in English and the language to be interpreted;
 - (3) conducting periodic examinations to ensure the availability of certified interpreters;

- (4) prescribing, determining and certifying the qualifications of persons who may serve as certified interpreters for persons with limited English proficiency;
 - (5) charging reasonable fees as deemed necessary for testing and certification;
 - (6) reciprocity of certification for interpreters from other jurisdictions provided that in the judgment of the Court Administrator, the criteria for certification in the foreign jurisdiction is at least as stringent as that established by the Court Administrator;
 - (7) providing for the audio recording of testimony that is the subject of interpretation; and
 - (8) providing a continuing education requirement for interpreters.
- (b) List of certified interpreters.--The Court Administrator shall compile, maintain and disseminate a current list of interpreters certified by the Court Administrator for the courts through any means deemed appropriate by the Court Administrator, including, but not limited to, a written directory, which shall be maintained on file with the office of the clerk of courts in each judicial district, and through publication on the official World Wide Web site of the Administrative Office.
- (c) Guidelines for court selection of otherwise qualified interpreters.--The Court Administrator shall provide guidelines to the courts for the selection and use of otherwise qualified interpreters in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this subchapter.
- (d) Fee schedule.--The Court Administrator shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by certified interpreters and otherwise qualified interpreters used in judicial proceedings.
- (e) Standards of professional conduct.--
- (1) The Court Administrator shall establish and adopt standards for a code of professional conduct for court interpreters for persons with limited English proficiency.
 - (2) The Court Administrator shall establish, administer or recommend a process to review and respond to allegations of violations of the code of

professional conduct for court interpreters for persons with limited English proficiency, including, but not limited to, decertification and other disciplinary measures.

§ 4412. Appointment of interpreter.

- (a) Appointment of certified interpreter.--Upon request or sua sponte, if the presiding judicial officer determines that a principal party in interest or witness has a limited ability to speak or understand English, then a certified interpreter shall be appointed, unless the certified interpreter is unavailable as provided in subsection (b).
- (b) Appointment of otherwise qualified interpreter.--
 - (1) An otherwise qualified interpreter shall be appointed by the presiding judicial officer if a good faith effort was made to obtain a certified interpreter and a certified interpreter was not reasonably available, as determined by the presiding judicial officer.
 - (2) Prior to the appointment of the otherwise qualified interpreter, the presiding judicial officer, pursuant to general rule, shall state on the record that a certified interpreter is not available and that the otherwise qualified interpreter:
 - (i) is readily able to interpret; and
 - (ii) has read, understands and agrees to abide by the code of professional conduct for court interpreters for persons with limited English proficiency, as established by the Court Administrator.
- (c) Additional interpreter.--After consideration of the length of the judicial proceeding and the number of persons with limited English proficiency involved, the presiding judicial officer may appoint, as provided in subsections (a) and (b), an additional interpreter or provide for additional interpretation in a manner deemed appropriate by the presiding judicial officer.
- (d) Immediate family.--The presiding judicial officer may appoint, as provided in subsections (a) and (b), an interpreter or provide for additional interpretation, as provided in subsection (c), for an immediate family member of a principal party in interest.

§ 4413. Replacement of interpreter.

Pursuant to general rule, the presiding judicial officer shall dismiss the interpreter and obtain the services of another interpreter in accordance with this subchapter, if the interpreter:

- (1) Fails to follow the standards prescribed by law or by the code of professional conduct for court interpreters for persons with limited English proficiency.
- (2) Is unable to effectively communicate with the presiding judicial officer or the person with limited English proficiency, including where the interpreter self-reports such inability.

§ 4414. Oath.

Before commencement of interpreter duties, an interpreter appointed under this subchapter shall take an oath or make an affirmation on the record that the interpreter will make a true interpretation to the person with limited English proficiency in the language which the person with limited English proficiency understands and that the interpreter will repeat the statements of the person with limited English proficiency to the court in English to the best of the interpreter's skill and judgment and in accordance with the code of professional conduct for court interpreters for persons with limited English proficiency.

§ 4415. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter shall not be compelled to testify in any judicial proceeding or administrative proceeding 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 confidential communication as provided by any statute or general rule, including, but not limited to:

- (1) Section 5916 (relating to confidential communications to attorney).
- (2) Section 5928 (relating to confidential communications to attorney).
- (3) Section 5942 (relating to confidential communications to news reporters).
- (4) Section 5943 (relating to confidential communications to clergymen).

- (5) Section 5944 (relating to confidential communications to psychiatrists or licensed psychologists).
- (6) Section 5945 (relating to confidential communications to school personnel).
- (7) Section 5945.1 (relating to confidential communications with sexual assault counselors).
- (8) Section 5945.2 (relating to confidential communications to crime stopper or similar anticrime program).

§ 4416. Cost of providing interpreter.

- (a) General rule.--An interpreter appointed in accordance with this subchapter is entitled to a reasonable fee for interpreter services and shall be reimbursed for actual and reasonable expenses as provided in this section.
- (b) Principal party in interest.--If the person with limited English proficiency is a defendant, party or a direct victim in a judicial proceeding for a criminal matter or juvenile proceeding pursuant to Chapter 63 (relating to juvenile matters), then the payment of the cost of providing the interpreter shall be the responsibility of the county of the court that has jurisdiction over the judicial proceeding for the criminal matter.
- (c) Witness.--If the person with limited English proficiency is compelled to appear as a witness in a judicial proceeding for a criminal matter, then the payment of the cost of providing the interpreter shall be the responsibility of the county of the court that has jurisdiction over the judicial proceeding for the criminal matter.
- (d) Payment determination.--Except as provided in subsections (b) and (c), disposition of all or part of the cost of providing interpreter services shall be in the discretion of the presiding judicial officer unless the principal party in interest is indigent. If the principal party in interest is indigent, then the cost of providing interpreter services shall be the responsibility of the county of the court that has jurisdiction over the judicial proceeding. The presiding judicial officer may order reimbursement to the county for its responsibilities under this section.

§ 4417. Funding.

Except as provided in section 4416 (relating to cost of providing interpreter), the General Assembly shall appropriate to the Court Administrator such sums as may be necessary to establish a program to facilitate the use of interpreters and otherwise fulfill the provisions of this subchapter. Implementation of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

SUBCHAPTER C

COURT INTERPRETERS FOR PERSONS WHO ARE DEAF

Section

4431. Duties of Court Administrator.

4432. Appointment of interpreter.

4433. Replacement of interpreter.

4434. Interrogation.

4435. Oath.

4436. Confidential communications in presence of interpreter.

4437. Cost of providing interpreter.

4438. Funding.

§ 4431. Duties of Court Administrator.

(a) Interpreter program.--The Court Administrator may establish a program to appoint and use certified interpreters in judicial proceedings. To certify interpreters, the Court Administrator shall either:

(1) establish a program, which shall include:

- (i) establishing and administering a comprehensive testing and certification program for interpreters;
- (ii) establishing and adopting standards of proficiency, including, but not limited to, certification by the Registry of Interpreters for the Deaf or similar registry;
- (iii) conducting periodic examinations to ensure the availability of certified interpreters;
- (iv) prescribing, determining and certifying the qualifications of persons who may serve as certified interpreters; and

- (v) charging reasonable fees as deemed necessary for testing and certification; or
- (2) establish and support a certification program by any means as deemed appropriate by the Court Administrator.
- (b) List of certified interpreters.--The Court Administrator shall compile, maintain and disseminate a current list of interpreters certified by the Court Administrator for the courts through any means deemed appropriate by the Court Administrator, including, but not limited to, a written directory, which shall be maintained on file with the office of the clerk of courts in each judicial district, and through publication on the official World Wide Web site of the Administrative Office.
- (c) Guidelines for court selection of otherwise qualified interpreters.--The Court Administrator shall provide guidelines to the courts for the selection and use of otherwise qualified interpreters in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this subchapter.
- (d) Fee schedule.--The Court Administrator shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by certified interpreters and otherwise qualified interpreters used in judicial proceedings.
- (e) Standards of professional conduct.--
 - (1) The Court Administrator shall establish and adopt standards for a code of professional conduct for court interpreters for persons who are deaf.
 - (2) The Court Administrator shall establish, administer or recommend a process to review and respond to allegations of violations of the code of professional conduct for court interpreters of persons who are deaf, including, but not limited to, decertification and other disciplinary measures.

§ 4432. Appointment of interpreter.

- (a) Appointment of certified interpreter.--Upon request or sua sponte, if the presiding judicial officer determines that a principal party in interest or witness is deaf, then a certified interpreter shall be appointed, unless the certified interpreter is unavailable as provided in subsection (b).

- (b) Appointment of otherwise qualified interpreter when certified interpreter is unavailable.--
- (1) An otherwise qualified interpreter shall be appointed by the presiding judicial officer if a good faith effort was made to obtain a certified interpreter and a certified interpreter was not reasonably available, as determined by the presiding judicial officer.
 - (2) Prior to the appointment of the otherwise qualified interpreter, the presiding judicial officer, pursuant to general rule, shall state on the record that a certified interpreter is not available and that the otherwise qualified interpreter:
 - (i) is readily able to interpret;
 - (ii) is certified by the National Association of the Deaf, the Registry of Interpreters for the Deaf or similar registry to the best of the knowledge of the presiding judicial officer; and
 - (iii) has read, understands and agrees to abide by the code of professional conduct for court interpreters for persons who are deaf, as established by the Court Administrator.
- (c) Additional interpreter.--After consideration of the length of the judicial proceeding, the special needs of the person who is deaf, and the number of persons involved who are deaf, the presiding judicial officer may appoint, as provided in subsections (a) and (b), an additional interpreter or provide for additional interpretation in a manner deemed appropriate by the presiding judicial officer.
- (d) Immediate family.--The presiding judicial officer may appoint, as provided in subsections (a) and (b), an interpreter or provide for additional interpretation, as provided in subsection (c), for an immediate family member of a principal party in interest.

§ 4433. Replacement of interpreter.

Pursuant to general rule, the presiding judicial officer shall dismiss the interpreter and obtain the services of another interpreter in accordance with this subchapter, if the interpreter:

- (1) Fails to follow the standards prescribed by law or by the code of professional conduct for court interpreters for persons who are deaf.
- (2) Is unable to effectively communicate with the presiding judicial officer or the person who is deaf, including where the interpreter self-reports such inability.

§ 4434. Interrogation.

Upon the arrest of any person who is deaf and prior to interrogation the arresting officer shall make available to the person who is deaf an interpreter who shall be present with the person who is deaf throughout the interrogation.

§ 4435. Oath.

Before commencement of interpreter duties, an interpreter appointed under this subchapter shall take an oath or make an affirmation on the record that the interpreter will make a true interpretation to the person who is deaf in a manner that the person who is deaf understands and that the interpreter will repeat the statements of the person who is deaf to the court in English to the best of the interpreter's skill and judgment and in accordance with the code of professional conduct for court interpreters for persons who are deaf.

§ 4436. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter shall not be compelled to testify in any judicial proceeding or administrative proceeding, to any statements made by the person who is deaf and interpreted by the interpreter when the person who is deaf is engaged in a confidential communication as provided by any statute or general rule, including, but not limited to:

- (1) Section 5916 (relating to confidential communications to attorney).
- (2) Section 5928 (relating to confidential communications to attorney).
- (3) Section 5942 (relating to confidential communications to news reporters).
- (4) Section 5943 (relating to confidential communications to clergymen).
- (5) Section 5944 (relating to confidential communications to psychiatrists or licensed psychologists).

(6) Section 5945 (relating to confidential communications to school personnel).

(7) Section 5945.1 (relating to confidential communications with sexual assault counselors).

(8) Section 5945.2 (relating to confidential communications to crime stopper or similar anticrime program).

§ 4437. Cost of providing interpreter.

(a) General rule.--Except as provided by general rule and in subsection (b), an interpreter appointed in accordance with this subchapter is entitled to a reasonable fee for the services of the interpreter and shall be reimbursed for actual and reasonable expenses by the county that has jurisdiction over the judicial proceeding.

(b) Payment determination of certain costs.--Disposition of all or part of the cost of providing an interpreter appointed in accordance with section 4433(d)(sic) (relating to appointment of interpreter) shall be in the discretion of the court that has jurisdiction over the judicial proceeding. In no event shall the cost of providing interpreter services be the responsibility of the person who is deaf. If the principal party in interest is indigent, then the cost of providing interpreter services shall be the responsibility of the county of the court that has jurisdiction over the judicial proceeding. The presiding judicial officer may order reimbursement to the county for its responsibilities under this subchapter.

§ 4438. Funding.

Except as provided in section 4437 (relating to cost of providing interpreter), the General Assembly shall appropriate to the Court Administrator such sums as may be necessary to establish a program to facilitate the use of interpreters and otherwise fulfill the provisions of this subchapter. Implementation of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

Section 5. Sections 7103 and 8701 of title 42 are amended to

Read:

§ 7103. Interpreters for the Deaf.

(A) General Rule.--in any civil proceeding in which a party is deaf, the court may appoint an interpreter to assist the party throughout the proceeding. Disposition of costs shall be in discretion of the court.

(B) Oath.--the interpreter shall swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.

(C) Definitions.--as used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Deaf." Persons who are deaf or whose hearing is so impaired that they are unable to understand or communicate the spoken English language.

"Interpreter." A person qualified and trained to translate for or communicate with deaf persons. Any person certified by the national or local registry of interpreters for the deaf or similar registry shall be considered qualified for the purposes of this section.

§ 8701. Interpreters for the Deaf.

(A) Interrogation.--upon the arrest of any deaf person, and prior to interrogation, the arresting officer shall make available to such person an interpreter who shall be present with such person throughout the interrogation.

(B) Criminal proceedings.--in any criminal proceeding in which a defendant is deaf the court shall appoint an interpreter to assist the defendant throughout the proceeding.

(C) Oath.--the interpreter shall swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.

(D) Definitions.--as used in this section the following words shall have the meanings given to them in this subsection:

"Deaf." Persons who are deaf or whose hearing is so impaired that they are unable to understand or communicate the spoken English language.

"Interpreter." A person qualified and trained to translate for or communicate with deaf persons. Any person certified by the national or local registry of interpreters for the deaf or similar registry shall be considered qualified for the purposes of this section.

Section 6. This act shall take effect in 60 days.