



TENNESSEE SPOKEN AND WRITTEN LANGUAGE ASSISTANCE PLAN (LAP)

****Tennessee thanks Washington State AOC for sharing its template for its LAP and the U.S. Department of Justice Civil Rights Division. Tennessee has borrowed heavily from these offices in creating this LAP.**

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TENNESSEE COURT'S LANGUAGE ACCESS PLAN

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I. LANGUAGE ACCESS POLICY DIRECTIVES/PURPOSE

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

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

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

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

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

Rule 42 also provides that "The director [Administrative Director of the Courts] is authorized to adopt policies and procedures necessary to implement this provision of the rule."

To this end, the Administrative Office of the Courts (AOC) created the Interpreter Issues Workgroup and has developed a plan to meet the needs of the LEP (limited English proficiency) population in Tennessee's courts.

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

II. DEFINITIONS

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

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

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

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

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

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

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

Program or Activity – all operations of the supervised or provided by the courts.

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

Sight Translation - oral translation of a written text.

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

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

III. LAWS AND LANGUAGE NEEDS

A. The Federal Law and Department of Justice Guidance

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (hereinafter Title VI), provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. In the regulations and guidance implementing the Civil Rights Act, the U.S. Department of Justice (DOJ) defines "program or activity" to include "any department, agency ... or other instrumentality of a state or of a local government ... any part of which is extended Federal financial assistance." 42 U.S.C. 2000d-4a. The Department of Justice has created guidance to assist in the development of plans (see attached 67 Fed. Reg. 41,464 Section VII) and programs to ensure that states are meeting the requirements of Title VI and are taking "reasonable steps to ensure meaningful access to their programs and activities by LEP persons" 67 Fed. Reg. 41,459 (June 18, 2002). The DOJ Guidance offered a four-factor analysis, to determine what language assistance is required. These factors include review of:

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

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

1. Number or proportion of LEP people in the court's jurisdiction – demography;
2. Frequency with which LEP individuals come into contact with the court;

3. The nature and importance of the program, activity or service provided by the court to the LEP person (including the consequences of lack of language services or inadequate services); and
4. Resources available to the court locally and statewide and costs. 67 Fed. Reg. 41,459 (June 18, 2002)

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

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

B. Tennessee Law

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

1. Qualifications for Interpreters used in Courts.

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

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

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

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

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

At this time, Tennessee has Rule 42 credentialed interpreters in Spanish, Arabic, Farsi, German, Indonesian, Japanese, Mandarin Chinese, Portuguese, and Vietnamese. If the court needs an interpreter, the AOC has posted all credentialed interpreters on its web page, listing the certified and registered interpreters by credential, language, and alphabetically listing the interpreters for each language and credential by city so as to assist the courts in finding an interpreter near their location. If the court needs an interpreter in a language where there is not a certified or registered interpreter, the AOC is contacted and provides names of individuals that have commenced the credentialing process and state they speak the language or provides contact

information obtained from other sources (Tennessee Foreign Language Institute, other states that belong to the Consortium for Language Access in the Courts, etc). To assist the courts in finding an interpreter and following the steps of Rule 42 to locate credentialed interpreters, the AOC drafted a “bench card” for interpreter issues which can be found on the AOC website at: <http://www.tncourts.gov/programs/court-interpreters>.

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

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

3. Payment of Interpreters

Recently the AOC obtained funding from the Tennessee General Assembly to provide for the costs of interpreter services in all court hearings (civil and criminal) in all juvenile, general sessions, trial and appellate courts, regardless of the parties’ indigency status. Rule 42 was modified, effective July 1, 2012, to note the modifications to payment of interpreter costs (Previously Tennessee Supreme Court Rule 42 provides in Section 7 that: “Generally, the costs of interpreter services in both civil and criminal cases shall be taxed as court costs pursuant to Tenn. R. Crim. P. 28 and Tenn. R. Civ. P. 54” and “Interpreter services may be assessed against the indigent defense fund pursuant to Tennessee Supreme Court Rule 13 in appropriate circumstances.”)

C. TN Language Assistance Needs

In 2007, the AOC requested assistance from the Tennessee Judicial Conference, Tennessee General Session Judges Conference, Tennessee Council of Juvenile and Family Court Judges, and the Tennessee Clerks of the Court Conference in determining foreign language interpretation services that are most requested in the Tennessee court system through a foreign language needs assessment survey. The survey also included inquiries as to the main points of contact within the courthouse where language assistance is needed, resources in place to provide language assistance, county budgets in place to meet court interpreter needs, utilization of court interpreting equipment provided to each judicial district, and comments regarding language assistance needs. The survey included 246 respondents and data summary is listed below.

Ranking by Party Request	Language
1	Spanish
2	Vietnamese

3	Korean
4	Mandarin Chinese
5	Arabic
6	Laotian, Russian, Nur (Sudanese)
7	Somali, Indian Languages
8	Bosnian/Serbian/Croatian
9	Kurdish
10	Farsi, French, German
11	Khmer (Cambodian)

Main points of contact an interpreter is needed	Percentage
Courtroom	89.5%
Counter	40.8%
Phone	23.9%

Resources in place to provide language assistance	Percentage
Credentialed Court Interpreters from AOC roster	83.6%
Bilingual Staff	16.0%
Translated Materials	18.2%
"I Speak Cards"	2.2%
Non-credentialed court interpreter	7.1%
Community Resources	2.7%

Equipment Utilization	Percentage
Periodically	9.2%
No equipment provided	16.3%
Not aware of equipment	50%
Equipment not utilized	15.3%
Equipment received	3.1%
Training needed	3.1%
Interpreter provides own equipment	3.1%

Comments regarding language assistance needs	Percentage
Misc.	6.0%
Language needs adequately covered	14.3%
Interpreters needed for the deaf and hard of hearing	3.6%
Reference to AOC's compensation procedures	2.4%
Most requested language, Spanish	20.2%
Roster available for non-credentialed LOS languages	3.6%
Interpreter needed for non-court related activities	3.6%
Caseload is minimal for interpreter usage	23.8%
Caseload is increasing for interpreter usage	22.6%

The survey is periodically updated; however the findings remain similar to the percentages reported in 2007. The language needs have not changed significantly as Spanish is still by far the most needed language.

The Tennessee Quick Facts as reported by the US Census Bureau in 2011 note that there is 5.9% of the total Tennessee population that speaks a language other than English at home. 1.4% of the population is Asian persons and 4.6% of the population is persons of Hispanic or Latino origin. According to the 2000 US Census, those of the 4,292,045 Tennessee populations over the age of 18, 4.8% or 209,845 speak a language other than English in the home. Of this 209,845, 52% or 109,846 speak Spanish or Spanish Creole; 8.3% speak German; 6.8% speak French; 3.0% speak Chinese; 2.5%; 2.6% speak Korean; 2.4 % speak Vietnamese; and 2.4% speak Arabic at home. The remaining percentages are diffused among 32 other languages or categories of languages. Clearly, the large percentage of the population that speak a language other than English at home, speak Spanish. The percentages of the languages the judges see in their courtroom follow fairly the data from the US Census Bureau.

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

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

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

A. Identification of LEP Persons:

The AOC has conducted surveys to determine the most frequently needed languages of LEP individuals. This survey must continue to be updated. To assist in identification of LEP persons, the courts and clerks offices in Tennessee have been provided “bench cards” and “information cards” which provide information about the Tennessee interpreter program and also have attached to the card, the language identification cards (or "I speak cards"), which allow LEP

persons to identify their language needs to staff. The “I speak card” was created by using the information on the Census Bureau website. The card has written “I speak _____” in English and many other languages per census data. In addition, the cards encourage LEP individuals to self-identify their language. Use of these cards enables the LEP person to be identified and allow staff to then seek assistance from interpreters for these individuals. These cards will be updated as needed. They are also located on the AOC interpreter web page as a resource at <http://www.tncourts.gov/programs/court-interpreters>.

B. Language Resources to be Developed and Provided:

The AOC belongs to the national Consortium for Language Access in the Courts. This Consortium provides testing materials for certification in many languages: <http://www.ncsc.org/Education-and-Careers/State-Interpreter-Certification/Testing-Schedules-by-State/Exams-available-to-members.aspx> including, but not limited to, Arabic, Cantonese, Korean, Laotian, Mandarin, Russian, Somali, Spanish, and Vietnamese. There are partial exams in German and recently California has provided exams to the Consortium that are being reviewed for administration nationwide. The AOC offers certification exams in all languages in which the National Consortium for Language Access in the Courts provides testing materials. In languages where certification does not exist, interpreters can still reach the registered credential stage by taking the two day interpreter Ethics and Skills Building Workshop, passing a written exam, passing oral proficiency interviews in English and the target language, and passing the criminal background check.

To become a certified or registered interpreter, a candidate must pass many exams. (See flow chart found on page 3 of the Interpreter Manual at http://www.tncourts.gov/sites/default/files/docs/manual_revised_4-2012.pdf) To improve the passage rate, the state’s Interpreter Program needs to find resources to help pay for the costs of training and/or study resources. The AOC will continue to research funding resources for these activities and programs. During the fiscal years 2010 and 2011, the AOC applied for and received ARRA funding from the Tennessee Office of Criminal Justice Programs to assist 51 potential interpreters with the costs of obtaining their interpreter credentials. ARRA funding was also obtained to pay for the costs of interpreters in domestic violence cases in several courts across the state.

The AOC will continue to make Interpreter Program brochures available at clerks and judicial conferences in an attempt to recruit interpreters. In addition, the AOC will continue to work with organizations in Tennessee to encourage bilingual individuals to start the credentialing process. The AOC has contacted local colleges and ethnic organizations and has provided documents to cultural fairs in the State. The AOC will continue to try to keep the costs of the

credentialing process low and will continue to use AOC staff as possible to administer exams. The Interpreter Program will continue to consider ways to recruit skilled candidates to commence the interpreter credentialing process through its website, local colleges, judges encouraging those in their community and contacts with cultural organizations in the State.

The AOC will continue to maintain the credentialed interpreter list on its web site. The AOC has an interpreter web page that allows for court staff and clerks offices, agencies that work with the courts, and members of the public to locate information on language interpreter services. This link can be found at: <http://www.tncourts.gov/programs/court-interpreters/find-court-interpreter>. On this page, one can find:

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

C. Training Programs for Staff, Judges and Others:

Judges and Clerks have been trained by the AOC staff and interpreters at their conferences throughout the years on how to obtain an interpreter. The bench cards as stated above have also been provided to all clerks' offices and judges and the information is available on the AOC website. Staff that has contact with the public should contact bilingual staff or use the "I Speak" cards to obtain assistance for LEP persons needing language assistance. The AOC will continue to provide education programs and materials on the interpreter program at clerks and judicial conferences. During the conferences the AOC will stress the need for courts and clerks' offices to assist in this education and recruitment process. Throughout the year, blast emails and communications on interpreter issues are sent as needed by the AOC.

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

D. Providing Notice and Resources to LEP Persons:

In order to let LEP persons know that interpreter services are available, the clerk's offices and judges have been provided the bench cards and have been trained at their conferences. It is hoped that the "I Speak" cards are used to determine the needs of the LEP persons. As far as free services, the costs for in-court interpretation are paid by the State pursuant to Supreme Court Rule 42. Subcontractors who provide services either through grants or contracts with the AOC have in their contracts that they will not discriminate, etc. In this way they are notified that they have an obligation to provide language assistance to LEP individuals who participate in their programs and activities.

The AOC will continue to take reasonable steps in educating judges, staff and clerks on interpreter issues.

E. Vital Documents Translation:

Each year the AOC will review to determine documents that need to be made translated for LEP individuals. The AOC will continue to receive assistance with this review from the Tennessee Supreme Court Access to Justice Commission. This Commission has committees that review language barrier and disabilities and the AOC has an Access to Justice Coordinator that works with the Commission and the AOC on these issues. The AOC consistently reviews which vital documents/forms are needed to be developed and translated into other languages. Once developed, these materials are then translated as funding is obtained. In addition, the I.C.E.

(Indigent Claim Entry) program, which is a new online system for submitting indigent fee claims, will also assist us in determining which languages the documents need to be translated into. Once all counties have been brought online through the I.C.E. program, it will be possible to research the database for interpreter claims submitted to the AOC in order to determine what languages are being interpreted in the court system.

Currently there are written translated materials provided to the public in languages other than English. These materials, forms and videos are found on the AOC website. These materials can be found at <http://www.tncourts.gov/forms-publications> and on <http://www.tncourts.gov/programs/self-help-center/what-should-i-expect-court-video>. These materials include but are not limited to Orders of Protection forms that have been translated into “plain language” and then into Spanish and other languages and a criminal rights video that has been translated into 7 languages. The AOC continuously applies for grant funding for translation of these forms into the next most needed languages. In addition, as stated earlier, the Access to Justice Commission is reviewing which forms are most needed by pro se individuals and for pro bono individuals and is putting these forms into plain language. Once put into plain language, these forms will be translated into other languages as funding become available through grants or other funding resources. Most likely the Tennessee Foreign Language Institute will translate the documents. This is a state agency used for translation of documents. The TFLI uses nationally certified translators if one is available in the language to translate the documents, or uses certified interpreters. If changes are needed to the translations, they will be noted and made as soon as possible.

V. MONITORING AND UPDATING LAP

Tennessee is not a unified court system. In addition, court clerks and other agencies located in courthouses are run by elected officials or other state agencies of which the state judicial branch has no control. However, the State does have control over payment of interpreter costs for court hearings. Recent funding from the Tennessee General Assembly for interpreter costs during juvenile, general sessions, trial and appellate court hearings has assisted the courts in determining language needs and providing the interpreter services during court hearings.

In order to monitor and update this Plan, the AOC will continue reviewing data regarding language access needs in the court system. In addition the AOC will continue taking reasonable

steps to approaching solutions for interpreter needs and the payment of the costs.

A. Data Collection

1. ICE

As stated above, the I.C.E. system will assist in data collection of cases in the court system using interpreters and the language interpretation needed by the parties. In addition, the AOC will continue to survey judges and clerks to determine language interpretation needs.

2. Surveys

As needed, (if the ICE program does not capture data needed) courts will be surveyed to determine language assistance needs taking into consideration the issues of policy, budgeting, hiring, training, monitoring and public notice and outreach. The “I Speak” cards that can be found on the AOC website will assist programs in determining language needs and the informational cards on obtaining an interpreter, also found on the AOC website, will assist programs and offices in obtainment of an interpreter as needed.

B. Judges

Judges in their counties must look to developing local solutions to interpreter needs. To that end, judges should:

3. Make reasonable efforts to provide languages assistance to those coming before the courts at no cost.
4. Take reasonable steps to ensure pursuant to Rule 42, those interpreters appointed on cases before them are qualified interpreters.
5. Take reasonable steps to note specific languages needs in their jurisdiction and encourage those that speak these languages in their communities to contact the AOC to learn about becoming a credentialed court interpreter.
6. Take reasonable steps to ensure, as possible, that information and vital documents are available in languages other than English as needed.
7. Take reasonable steps to make out-of-court service providers aware that they must provide for language needs of clients coming to them for services.

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

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

C. Clerks and Court Administrators

Because the clerk's office is usually the first office that the public comes in contact with in the courthouse, the clerk's office may be aware that an interpreter is needed prior to a hearing being held. Clerks can take reasonable steps to arrange for interpreters and judges can assist in this, by asking jail staff to advise if an interpreter is needed prior to a hearing. When documents are filed, clerk's offices can note on the file if an interpreter will be needed at any future scheduled hearings. While the court system has no control over court clerk's offices, all can collaborate on this endeavor,

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

Since court staff and administrators are generally the first to interact with the public in a courthouse setting, they must make sure that the public is aware of their right to an interpreter and how they can request an interpreter. Signs and informational packets can provide this information and should be readily available to the public. The judges should assist, as reasonably possible, with helping to create solutions for these issues.

In May, 2012, the AOC held an interpreter summit bringing together judges, clerks, law enforcement, court administrators, public defenders, attorney generals and interpreters so they could commence creative solutions to collaboration across office lines. Since the Summit, there has been collaboration between agencies and offices and a grass roots educational effort has begun to get the information to the those agencies and their staff that interact with LEP individuals in the court system. The juvenile court staff has held a conference that included a session on interpreter issues and the AOC and other partners have presented to attorneys and court staff on interpreter issues.

D. Training of Staff

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

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

VI. CONCLUSION

Because Tennessee is not a unified court system, the AOC must take the lead in educating and advising judge, court staff and those stakeholders in the judicial and legal system. The strategic plan therefore will be a continual plan to do as stated above.

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

provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, correctional facilities should, where appropriate, ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.¹² Competence can often be ensured by having a

¹² For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.¹³ Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of DOJ recipients regarding certain law enforcement, health, and safety services and certain legal rights).

¹³ For instance, there may be languages which do not have an appropriate direct translation of some courtroom or legal terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DOJ recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or