

Enrolled
House Bill 2339

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Judicial Department)

CHAPTER

AN ACT

Relating to the interpretation of adjudicatory proceedings; creating new provisions; amending ORS 40.325, 45.272, 45.275, 45.285, 45.288 and 419C.285; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 45.272 is amended to read:

45.272. As used in ORS 45.272 to 45.297:

(1) "Adjudicatory proceeding" means:

(a) Any contested case hearing conducted under ORS chapter 183; or

(b) Any hearing conducted by an agency in which the individual legal rights, duties or privileges of specific parties are determined if that determination is subject to judicial review by a circuit court or by the Court of Appeals.

(2) "Agency" has that meaning given in ORS 183.310.

(3) "Critical stage of the proceeding" has the meaning given that term in ORS 147.500.

(4) "Victim" has the meaning given that term in ORS 147.500.

SECTION 2. ORS 45.275 is amended to read:

45.275. (1)(a) The court shall appoint a qualified interpreter in a civil or criminal proceeding, and a hearing officer or the designee of a hearing officer shall appoint a qualified interpreter in an adjudicatory proceeding, whenever it is necessary:

[(a)] **(A)** To interpret the proceedings to a non-English-speaking party;

[(b)] **(B)** To interpret the testimony of a non-English-speaking party or witness; or

[(c)] **(C)** To assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer.

(b) The court shall appoint a qualified interpreter in a criminal proceeding whenever it is necessary to interpret the proceedings to a non-English-speaking victim who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.

(2) A fee may not be charged to any person for the appointment of an interpreter to interpret testimony of a non-English-speaking party or witness, **to interpret the proceedings to a non-English-speaking party or victim** or to assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer. [A fee may not be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English-speaking party.] A fee may not be charged to any person for the appointment of an interpreter if appointment is made to determine whether the person is [unable to pay or] non-English-speaking for the purposes of this section.

[(3) A non-English-speaking party is considered unable to pay for an interpreter for the purposes of this section if:]

[(a) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter, and provides any other information required by the court or agency concerning the inability to pay for such an interpreter; and]

[(b) It appears to the court or agency that the party is in fact unable to pay for a qualified interpreter.]

[(4)] (3) Fair compensation for the services of an interpreter appointed under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state are not payable from the Public Defense Services Account established by ORS 151.225 or from moneys appropriated to the Public Defense Services Commission. Fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case are payable from the Public Defense Services Account or from moneys appropriated to the Public Defense Services Commission.

(d) By the agency in an adjudicatory proceeding.

[(5)] (4) If a party, **victim** or witness is dissatisfied with the interpreter appointed by the court, the hearing officer or the designee of the hearing officer, the party, **victim** or witness may request the appointment of a different *[certified]* interpreter. A request under this subsection must be made in a manner consistent with the policies and notice requirements of the court or agency relating to the appointment and scheduling of interpreters. If the substitution of another interpreter will delay the proceeding, the person making the request must show good cause for the substitution. Any party may object to use of any interpreter for good cause. Unless the court, hearing officer or the designee of the hearing officer has appointed a different interpreter for cause, the party using any interpreter other than the interpreter originally appointed by the court, hearing officer or the designee of the hearing officer shall bear any additional costs beyond the amount required to pay the original interpreter.

[(6)] (5) A judge or hearing officer, on the judge's or hearing officer's own motion, may substitute a different interpreter for the interpreter initially appointed in a proceeding. A judge or hearing officer may make a substitution under this subsection at any time and for any reason.

[(7)] (6) A court may allow as costs reasonable expenses incurred by a party in employing the services of an interpreter in civil proceedings in the manner provided by ORCP 68.

[(8)] (7) A court, a hearing officer or the designee of a hearing officer shall require any person serving as an interpreter for the court or agency to state the person's name on the record and whether the person is certified under ORS 45.291. If the person is certified under ORS 45.291, the interpreter need not make the oath or affirmation required by ORS 40.325 or submit the interpreter's qualifications on the record. If the person is not certified under ORS 45.291, the interpreter must make the oath or affirmation required by ORS 40.325 and submit the interpreter's qualifications on the record.

[(9)] (8) For the purposes of this section:

(a) "Hearing officer" includes an administrative law judge.

(b) "Non-English-speaking person" means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.

(c) "Qualified interpreter" means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original

statement, without additions or omissions. “Qualified interpreter” does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party, **victim** or witness.

SECTION 3. ORS 45.285 is amended to read:

45.285. (1) For the purposes of this section:

(a) “Assistive communication device” means any equipment designed to facilitate communication by a person with a disability.

(b) “Hearing officer” includes an administrative law judge.

(c) “Person with a disability” means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

(d) “Qualified interpreter” means a person who is readily able to communicate with the person with a disability, interpret the proceedings and accurately repeat and interpret the statements of the person with a disability to the court.

(2) In any civil action, adjudicatory proceeding or criminal proceeding, including a court-ordered deposition if no other person is responsible for providing an interpreter, in which a person with a disability is a party or witness, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the person with a disability, or to interpret the testimony of the person with a disability.

(3) In any criminal proceeding, the court shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to a victim who is a person with a disability and who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.

~~[(3)]~~ (4) A fee may not be charged to the person with a disability for the appointment of an interpreter or use of an assistive communication device under this section. A fee may not be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person *[has]* **is a person with** a disability for the purposes of this section.

~~[(4)]~~ (5) Fair compensation for the services of an interpreter or the cost of an assistive communication device under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state are not payable from the Public Defense Services Account established by ORS 151.225 or from moneys appropriated to the Public Defense Services Commission. Fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case are payable from the Public Defense Services Account or from moneys appropriated to the Public Defense Services Commission.

(d) By the agency in an adjudicatory proceeding.

SECTION 4. ORS 45.288 is amended to read:

45.288. (1) For the purposes of this section:

(a) “Hearing officer” includes an administrative law judge.

(b) “Non-English-speaking person” has the meaning given that term in ORS 45.275.

(c) “Person with a disability” has the meaning given that term in ORS 45.285.

(d) “Qualified interpreter” means a person who meets the requirements of ORS 45.285 for an interpreter for a person with a disability, or a person who meets the requirements of ORS 45.275 for an interpreter for a non-English-speaking person.

(2) Except as provided by this section, whenever a court is required to appoint an interpreter for any person in a proceeding before the court, or whenever a hearing officer is required to appoint an interpreter in an adjudicatory proceeding, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter. Upon request of a party, **victim** or witness, the court, hearing officer or designee of the hearing officer, in the discretion of the court, hearing officer or the designee of the hearing officer, may appoint a qualified interpreter to act as an interpreter in lieu of a certified interpreter in any case or adjudicatory proceeding.

(3) The requirements of this section apply to appointments of interpreters for persons with disabilities and for non-English-speaking persons.

(4) The court, hearing officer or the designee of the hearing officer may not appoint any person under ORS 45.272 to 45.297, [or] 132.090 **or 419C.285** if:

(a) The person has a conflict of interest with any of the parties, **victims** or witnesses in the proceeding;

(b) The person is unable to understand the judge, hearing officer, party, **victim** or witness, or cannot be understood by the judge, hearing officer, party, **victim** or witness; or

(c) The person is unable to work cooperatively with the judge of the court, the hearing officer, the person in need of an interpreter or the counsel for that person.

(5) The Supreme Court shall adopt a code of professional responsibility for interpreters. The code is binding on all interpreters who provide interpreter services in the courts or in adjudicatory proceedings before agencies.

SECTION 5. ORS 40.325 is amended to read:

40.325. Except as provided in ORS 45.275 [(8)] (7), an interpreter is subject to the provisions of the Oregon Evidence Code relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

SECTION 6. ORS 419C.285 is amended to read:

419C.285. (1) At the adjudication stage of a delinquency proceeding, the parties to the proceeding are the youth and the state, represented by the district attorney or the juvenile department. At the dispositional stage of a delinquency proceeding, the following are also parties:

(a) The parents or guardian of the youth;

(b) A court appointed special advocate, if appointed;

(c) The Oregon Youth Authority or other child care agency, if the youth is temporarily committed to the agency; and

(d) An intervenor who petitions or files a motion on the basis of a child-parent relationship under ORS 109.119.

(2) The rights of the parties include, but are not limited to:

(a) The right to notice of the proceeding and copies of the pleadings;

(b) The right to appear with counsel and to have counsel appointed if otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and participate in hearings;

(d) The right to appeal;

(e) The right to request a hearing; and

(f) The right to notice of any proceeding before the Psychiatric Security Review Board.

(3)(a) Persons who are not parties under subsection (1) of this section may petition the court for rights of limited participation. The petition must be filed and served on all parties no later than two weeks before a proceeding in the case in which participation is sought. The petition must state:

(A) The reason the participation is sought;

(B) How the person's involvement is in the best interest of the youth or the administration of justice;

(C) Why the parties cannot adequately present the case; and

- (D) What specific relief is being sought.
- (b) If the court finds that the petition is well founded, the court may grant rights of limited participation as specified by the court.
- (c) Persons petitioning for rights of limited participation are not entitled to appointed counsel.
- (4) In all delinquency proceedings, interpreters shall be appointed in the manner specified by ORS 45.275 and 45.285 for the parties to the proceeding, **the victim, witnesses**, any person granted rights of limited participation, and any parent or guardian of the youth without regard to whether the parent or guardian is a party to the proceeding.

SECTION 7. The amendments to ORS 45.272, 45.275, 45.285, 45.288 and 419C.285 by sections 1 to 4 and 6 of this 2015 Act apply only to proceedings occurring on or after the effective date of this 2015 Act.

SECTION 8. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House February 11, 2015

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 Timothy G. Sekerak, Chief Clerk of House

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 Tina Kotek, Speaker of House

Passed by Senate May 18, 2015

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 Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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 Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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 Jeanne P. Atkins, Secretary of State