



# Language Access Plan for the Indiana Judicial Branch

February 2019

*Prepared by*

Indiana Supreme Court

Language Access Advisory Committee

(formerly known as the Language Access Task Force)

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# Introduction and Plan Overview

The Indiana Supreme Court is committed to providing meaningful, fair, and effective language access in Indiana courts. From the early work of the Indiana Supreme Court Commission on Race and Gender Fairness, which led the Indiana judiciary to develop a statewide court interpreter certification system, to the current initiatives of the [Language Access Advisory Committee](#), the Indiana judicial branch is working to improve access to the state courts for limited English proficient (LEP) individuals and those who are deaf or hard of hearing.

The Indiana judicial branch's Language Access Plan (LAP) is a result of ongoing efforts by the Language Access Task Force to improve and develop comprehensive statewide policies and procedures to ensure language access throughout the courts in the state. While the Indiana judicial branch is a non-unified court system, the Indiana Supreme Court provides the statewide trial rules for local courts throughout the state's ninety-two counties. Language access rules and procedures are within the purview of the Indiana Supreme Court and are overseen by the Office of Judicial Administration. The plan will be managed and administered under the OJA. Trial courts also have their own local rules for court operations and may have additional policies and procedures to address language and communication needs at the local level.

The LAP provides the framework, policies, and procedures for the statewide delivery of high-quality meaningful language access, and provides the guidance and support needed to comply with the language access policy of the judiciary. (A definition of terms is included as [Appendix A](#).) This LAP addresses the following:

1. Indiana's linguistic diversity and its judicial branch structure;
2. Legal framework for the provision of language access in the judiciary;
3. Need for and strategies to implement needs assessments, data collection, and early identification of language needs in the community and the court user population;
4. Language access services in courtroom proceedings, including the appointment and qualification of court interpreters for in-person and remote interpreting;
5. Language access services outside the courtroom, including multilingual signage, translated forms and documents, and multilingual staff;
6. Translation protocols for materials provided by the judicial branch;
7. Training and education of the judicial branch;
8. Outreach and dissemination of information regarding language access services in the courts; and
9. Ongoing monitoring of the LAP and the services provided, and provision for future updates.

# I. Background: Snapshot of Indiana's Demographics and Judicial Branch Structure

## A. State Demographics

According to 2014 Census figures, the population of Indiana is over 6.1 million, with approximately 7 percent of its residents speaking a language other than English at home. Over 198,000, or 3.24 percent, of residents are LEP (speak English “less than very well”).<sup>1</sup> After English, the top languages are (in order) Spanish; German; Chinese; Pennsylvania Dutch; French; Dutch; Punjabi; Burmese; and a group of African languages: Kru, Ibo, and Yoruba.<sup>2</sup> Spanish is by far the most common language, other than English, with approximately 4.6 percent of the population indicating Spanish as their primary language. These numbers vary from county to county. It should also be noted that while interpreter use generally maps to these statewide demographics, there is notable variation between the overall language breakdown among Indiana residents and interpreter use and language access needs in the courts. This is particularly the case regarding the languages most in demand in the courts after Spanish. Based on local interpreter use data obtained from court interpreter grant quarterly reports, claim reimbursement vouchers, grant applications, LanguageLine Solutions®<sup>3</sup> usage data, and other court reports, Burmese and other languages spoken within Myanmar (Burma) are second in demand to Spanish, followed by Punjabi, Somali, Mandarin, and Arabic.

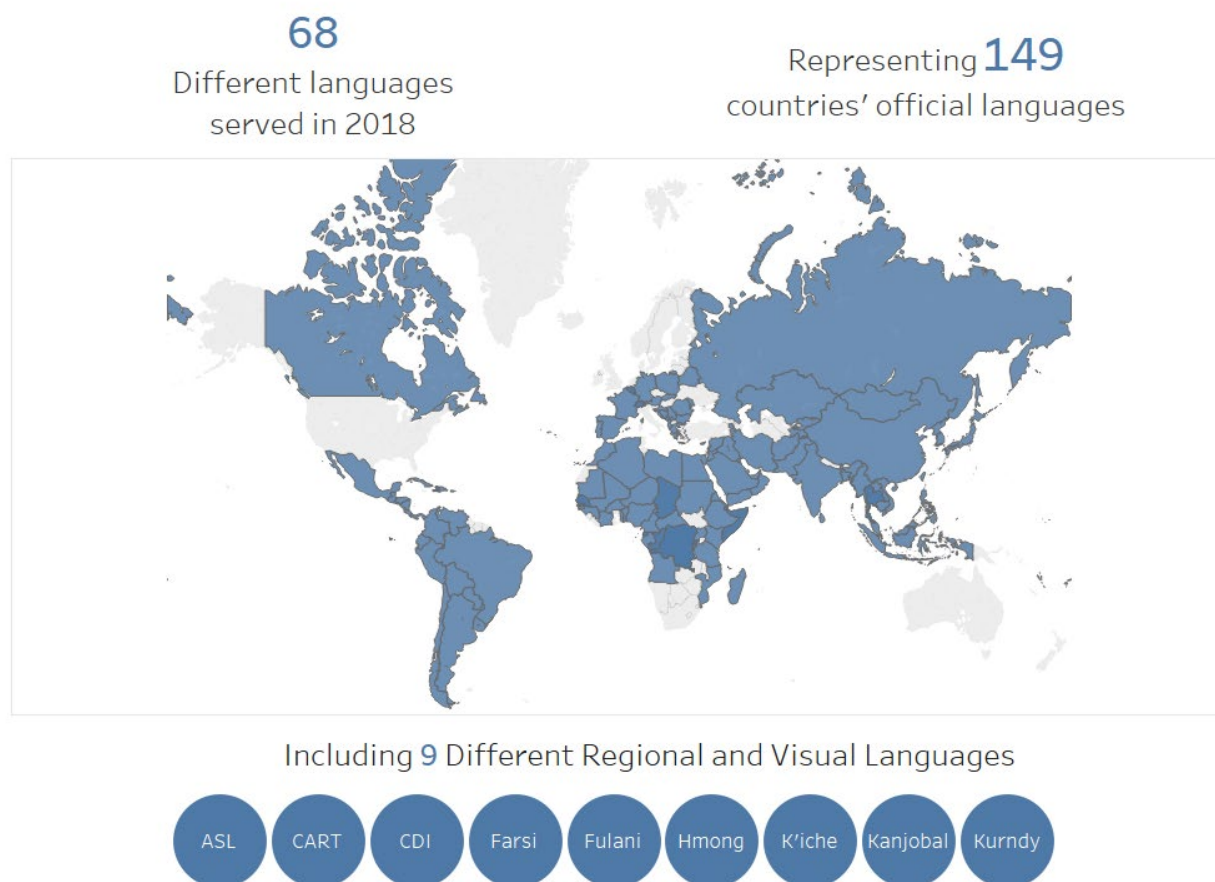
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<sup>1</sup> See map and figures of the U.S. Department of Justice's Civil Rights Division at <https://www.lep.gov/maps/lma2014/Final/> (archived at <https://perma.cc/VS5D-9ZXC?type=image>). These figures are somewhat lower than more recent Census estimates, which place the state at approximately 6.6 million residents; however, the map provides a pie chart (that can be switched over to a table format), which breaks down the LEP population by language, illustrating the diversity of languages in the state.

<sup>2</sup> See <http://worldpopulationreview.com/states/indiana-population/> (archived at <https://perma.cc/3SVF-WVCK>).

<sup>3</sup> LanguageLine Solutions® is a telephone interpreting service contracted by the Indiana Supreme Court for the provision of telephone interpretation for brief routine matters. Local courts take advantage of the branch's statewide contract to secure LanguageLine's services.

## Languages Offered



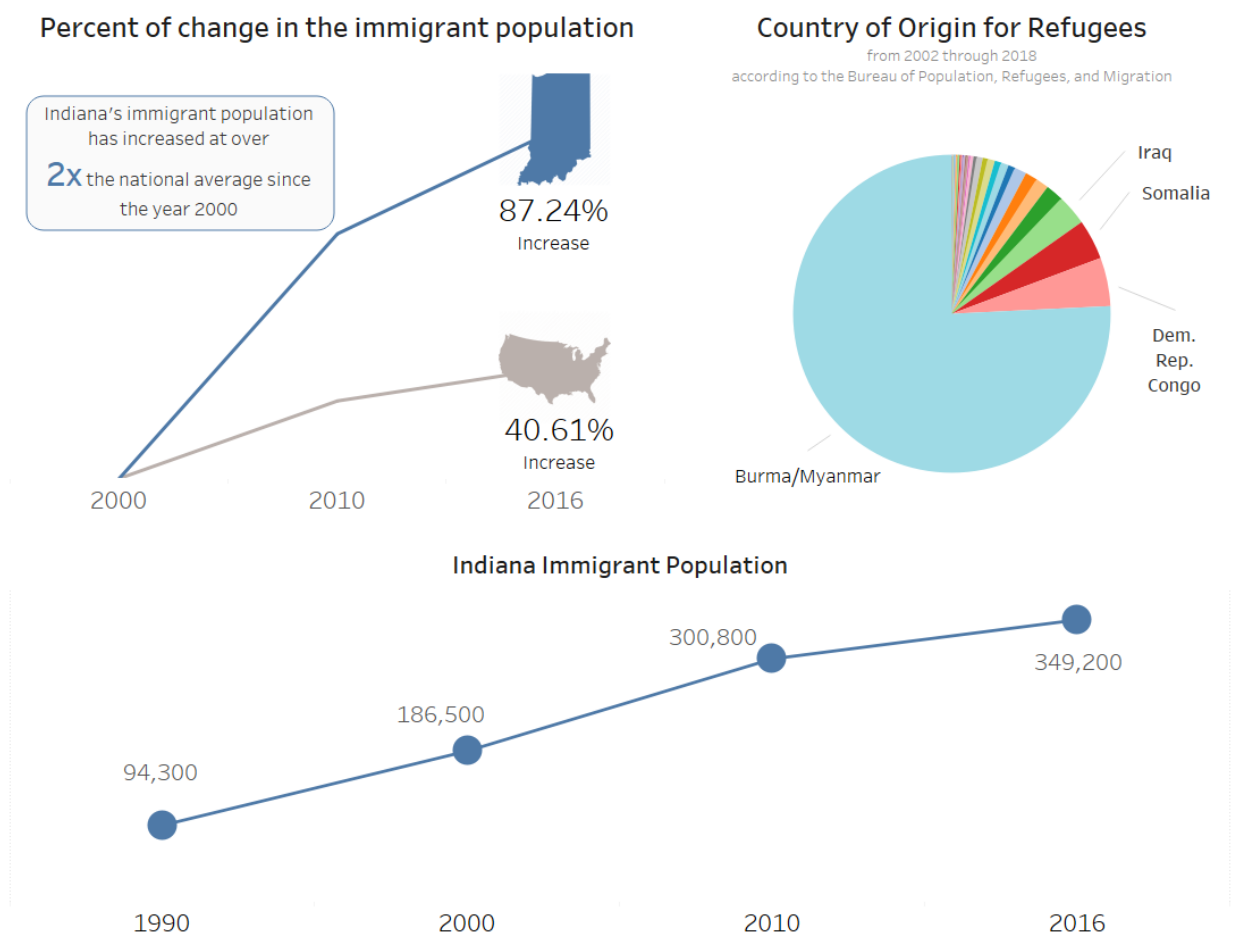
*Figure 1: 2018 Foreign Spoken Language Use in Indiana*

In 2016, approximately 5 percent of the state's population was comprised of immigrants. The most common birthplace for foreign-born residents of the state was Mexico (31.6 percent of immigrants), followed by India (9.1 percent), China (7.9 percent), the Philippines (3.3. percent), and Myanmar (2.9 percent).<sup>4</sup> Compared to other states, Indiana has a relatively high number of Macedonia-born residents, so Serbo-Croatian is spoken by a significant number of residents. African countries are also places of relatively high origin for Indiana.<sup>5</sup>

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<sup>4</sup> See <https://www.americanimmigrationcouncil.org/research/immigrants-in-indiana> (archived at <https://perma.cc/8R67-DFFL>).

<sup>5</sup> See <https://datausa.io/profile/geo/indiana/#demographics> (archived at <https://perma.cc/C5KT-53YN>).



*Figure 2: Immigrant Demographics in Indiana*

Indiana's percentage of LEP residents may not seem significant compared to the United States as a whole, where immigrants compose 13 percent of the population. However, the rate of increase of Indiana's foreign-born population is much faster than the national average. Between 2000 and 2016, the state has seen an 87.2 percent increase in foreign-born residents (compared to a 6.6 percent population increase for US-born Indiana residents).<sup>6</sup> Even more dramatic is the percentage increase in this same time span for the state's LEP population, which rose by 90.5 percent.<sup>7</sup> Indianapolis, for example, saw the population of working-age people with limited English skills almost double between 2000 and 2012, according to a report released in 2014 by

<sup>6</sup> See <https://www.migrationpolicy.org/data/state-profiles/state/demographics/IN> (archived at <https://perma.cc/72HF-HZY3>).

<sup>7</sup> See <https://www.migrationpolicy.org/data/state-profiles/state/language/IN> (archived at <https://perma.cc/4SR2-AR8Z>). Also available is the breakdown of LEP individuals by age in 2016, showing that LEP adults compose approximately 3.9 percent of the population of Indiana.

the Brookings Institution; and as of 2012, more than half of the 4.6 percent LEP persons in Indianapolis were recent immigrants.<sup>8</sup>

With respect to the deaf and hard of hearing population in Indiana, according to the Cornell University Employment and Disability Institute's 2011 Disability Status Report, 3.7 percent of residents of all ages reported a hearing disability. The percentage for individuals age 65 to 74 has risen to 10.5 percent; and, as should be expected, for individuals 75 and older, it is considerably higher at almost 23 percent.<sup>9</sup>

## B. Structure of the Indiana Judicial Branch

The Indiana judicial branch consists of 328 courts of records and sixty-three city and town courts in the state's ninety-two counties as of 2018. While a non-unified court system, the Indiana Supreme Court provides statewide trial rules for the local courts. Trial courts also have their own local rules for court operations.

In terms of structure, the trial courts include circuit courts, as well as superior courts, in many counties. Marion County, the largest in the state, is the only county with distinct small claims courts. St. Joseph County is the only county with a specialized probate court, which has juvenile jurisdiction. The sixty-three city and town courts handle minor offenses like city ordinances, misdemeanors, and infractions. Trial courts are courts of general jurisdiction, hearing criminal and civil cases.

Each judge is either an independently elected official or an appointee through a statutorily prescribed process. The judges are neither appointees nor employees of the Indiana Supreme Court.

The Supreme Court and the Chief Justice oversee the administrative agencies that undertake various judiciary initiatives across the state, including branch-wide education for staff and judicial officers, certification of specialized courts, technology, promotion of diversity, and access to justice. Among the access to justice and diversity initiatives are two key programs related to language access: Language Access Task Force and the Race and Gender Fairness Commission.

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<sup>8</sup> Available at <https://www.brookings.edu/research/investing-in-english-skills-the-limited-english-proficient-workforce-in-u-s-metropolitan-areas/> (archived at <https://perma.cc/V3QM-P6F7>).

<sup>9</sup> [2011 Disability Status Report: Indiana](#) (2011) (archived at <https://perma.cc/SVV2-MWYJ>), published by Cornell University.

The latter includes the Court Interpreter Certification Program which will be discussed further in this plan.

## II. Legal Framework for Language Access

Indiana state law, together with federal law and regulations, requires the provision of language access to limited English proficient and deaf or hard of hearing Indiana residents during court proceedings. Below is a discussion of the legal framework for providing language access in the Indiana trial courts.

### A. Federal Laws and Regulations

Language access for LEP persons is addressed under Title VI of the Civil Rights Act of 1964<sup>10</sup> and the Omnibus Crime Control and Safe Streets Act of 1968.<sup>11</sup> Both prohibit any agency receiving federal funds from discriminating on the basis of race, color, or national origin. Indiana courts, as is true of state courts nationally, receive federal financial assistance in the form of grants and other monetary awards and/or assistance, and as such, fall under Title VI. Case law and Department of Justice (DOJ) guidance documents have established that the mandate to ensure equal access to individuals regardless of national origin requires the provision of meaningful access to LEP users.

In its guidance documents to assist recipients of federal funds in implementing Title VI, the DOJ provides for a four-factor test to assess a recipient's compliance. The four factors include:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or activity;
2. The frequency with which LEP individuals come in contact with the program or activity;
3. The nature and importance of the program, activity, or service provided to people's lives; and
4. The resources available to the recipient and costs.<sup>12</sup>

In February 2014, the DOJ issued its [Language Access Planning and Technical Assistance Tool for Courts](#), a specific planning tool for courts that incorporates over a decade of guidance

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<sup>10</sup> 42 U.S.C. § 2000d, *et seq.*

<sup>11</sup> 42 U.S.C. § 3789d.

<sup>12</sup> [Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance](#) (archived at <https://perma.cc/JUL7-7CBM>).

documents for recipients of federal funds. The intent of this recent document is to assist courts and court systems in their plans to implement language access programs. The tool specifically addresses the development of language access planning, including key plan elements, monitoring mechanisms, and implementation guidance. The DOJ provides further assistance through commonly asked questions and answers regarding Title VI protections.<sup>13</sup>

Deaf and hard of hearing individuals accessing the Indiana trial courts are federally protected under the Americans with Disabilities Act (ADA) of 1990. The ADA mandates that all courts provide reasonable accommodations to court users, including parties, counsel, witnesses and jurors. A federal decision in the Southern District of Indiana held that spectators also have a right to an interpreter in certain circumstances.<sup>14</sup> Therefore, sign language interpreters or other reasonable accommodations must be provided to deaf and hard of hearing court users. Further, if a spectator requests an interpreter, the court should either provide the interpreter or obtain advice of counsel before denying an interpreter.

## B. Indiana State Law

The Indiana Constitution<sup>15</sup> protects the due process rights of criminal defendants in a criminal proceeding. In protecting those rights, the Indiana Supreme Court in 1989 made clear that an “interpreter is necessary to implement fundamental notions of due process.”<sup>16</sup> Since then, several other appellate and Supreme Court cases have confirmed that a defendant’s due process rights require that an interpreter be provided when “a trial court is put on notice that a defendant has significant language difficulty.”<sup>17</sup> In a more recent case, *Ponce v. State*,<sup>18</sup> the Supreme Court acknowledged the increased language diversity in Indiana as well as the barriers that LEP persons face in obtaining meaningful access to the courts. The unanimous opinion discusses the efforts by the state to create a centralized interpreter certification program to

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<sup>13</sup> See [Commonly Asked Questions and Answers Regarding the Protection of LEP Individuals under Title VI of the Civil Rights Act of 1964 and Title VI Regulations](https://perma.cc/DB4T-4F3M) (archived at <https://perma.cc/DB4T-4F3M>).

<sup>14</sup> See *Prakel v. State of Indiana*, 100 F.Supp.3d 661 (S.D. Ind. 2015). A deaf adult man wished to attend his mother’s hearings on charges of probation revocation. The Court found that even as a spectator only, the son was entitled to an interpreter as a reasonable accommodation under the ADA.

<sup>15</sup> See Ind. Const. art. 1, §13.

<sup>16</sup> See *Martinez Chavez v. State*, 534 N.E.2d 731, 737 (1989).

<sup>17</sup> See *Nur v. State*, 869 N.E.2d 472, 479 (2007). See also *Arrieta v. State*, 878 N.E.2d 1238, 1243 (2008) itself citing *Nur v. State*.

<sup>18</sup> *Ponce v. State*, 9 N.E.3d 1265 (2014).

ensure qualified interpreters for any litigant with a language access barrier, and the need to ensure accurate interpretation to protect a defendant's rights of due process.<sup>19</sup>

The [Indiana Interpreter Code of Conduct and Procedure](#), Rule IV (1)(b) additionally provides guidance in criminal cases, clearly setting forth the circumstances under which an interpreter should be appointed in a criminal case.<sup>20</sup> Those circumstances generally address the inability of a defendant to communicate with the court and subsequent lack of equal footing with an English-speaking defendant of similar background. Commentary to Rule IV(1)(b) adds that while the need for an interpreter may be recognized after request by a party or an attorney, the court on its own may also conduct its own *voir dire* or consider disclosures made by the parties, attorneys, court staff, or others familiar with the litigant's ability to communicate in English.

Indiana law also addresses the provision of interpreters in civil cases. Indiana statutes acknowledge the rights of LEP and deaf or hard of hearing parties and witnesses in civil proceedings:

*Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a party to or a witness in a civil proceeding is entitled to an interpreter to assist the person throughout the proceeding.*<sup>21</sup>

Under Indiana Code § 34-45-1-4, the interpreter may be retained by the party or witness or appointed by the court. The same statute also provides for the court's ability to inquire into an interpreter's qualifications and integrity. Although no similar provisions exist in the Indiana Code's Criminal Law and Procedure section, Indiana Code § 35-35-2-2 makes clear that in criminal cases, where no procedure is provided, the trial court may act consistently with applicable statutes. Therefore, in addition to case law discussing language access as a due process right of defendants in criminal proceedings, the rights delineated in Indiana Code § 34-45-1-4 are also applicable in criminal proceedings in the state.

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<sup>19</sup> *Id.* at 1269.

<sup>20</sup> [Indiana Rules of Court: Interpreter Code of Conduct and Procedure & Disciplinary Process for Certified Court Interpreters and Candidates for Interpreter Certification](#), pp.9-10. Available at <https://www.in.gov/judiciary/rules/interpreter/interpreter.pdf> (archived at <https://perma.cc/5Y29-GLWE>).

<sup>21</sup> Indiana Code §34-45-1-3 (2017)

The Indiana Rules of Evidence also address court interpreters in the judiciary. Rule 604 requires that an “interpreter must be qualified and must give an oath or affirmation to make a true translation.” Case law confirms that trial courts, in both criminal and civil proceedings, should establish an interpreter’s qualifications and administer an oath to the interpreter to make an accurate translation.<sup>22</sup>

## C. Language Access Initiatives of the Indiana Supreme Court

In 2002, Indiana created a Court Interpreter Certification Program. This was a result of the findings and recommendations of the Indiana Supreme Court Commission on Race and Gender Fairness after a survey of Indiana judges, attorneys, court employees, and court users. The program currently has 140 interpreters credentialed in over ten languages, including American Sign Language (ASL), Arabic, Mandarin, and Spanish. It also provides a mechanism for interpreters in languages without an oral exam to become “qualified.” More information can be found on the judiciary’s [Court Interpreter Certification](#) page, and is also discussed below in the section addressing the provision of qualified interpreters for court proceedings.

Through the Indiana Rules of Court, an [Interpreter Code of Conduct and Procedure & Disciplinary Process](#), referenced above, was also created and last revised in January 2018. The policy sets forth:

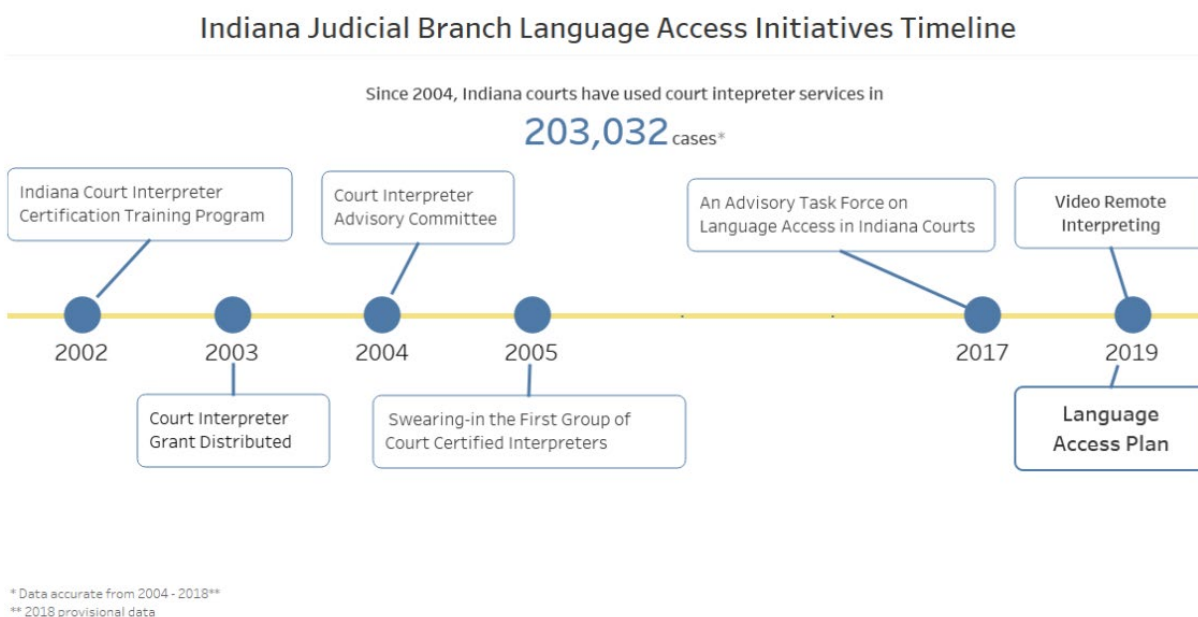
- Ethical canons and conduct requirements for court interpreters;
- Procedures for determining the need for an interpreter, including guidelines for the appointment of team interpreting, a waiver of an interpreter, and the requirement to create audio recordings of interpreted proceedings;
- Requirements for certification; and
- A disciplinary process for court interpreters and court interpreter candidates, including a description of the complaint process, possible sanctions, and appeal of disciplinary action.

In January 2017, the Supreme Court created an Advisory Task Force on [Language Access in Indiana Courts \(the Task Force\)](#). The Task Force includes attorneys, judicial officers,

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<sup>22</sup> See *Mariscal v. State*, 687 N.E.2d 378 (1997) regarding the applicability of Evidence Rule 604 in criminal proceedings, and *Tesfamariam v. Wondenhaimanot*, 956 N.E.2d 118 (2011), clarifying that Rule 604 similarly applies in civil matters. The Court in *Tesfamariam* (at 122) further provides a discussion and a non-exhaustive list of questions that the trial court may ask to qualify an expert.

representatives from the deaf and hard of hearing community, educators, interpreters, and advocates who work with LEP communities in the state. Projects of the Task Force include the development and implementation of this Language Access Plan, the development and implementation program for remote video interpreting services, the improvement of interpreter certification program and supporting process, the translation of court documents and materials into languages other than English, and policies and procedures for implementing and evaluation of these projects.



*Figure 3: Timeline of Indiana Judicial Branch's Major Language Access Initiatives*

*Description of image: Since 2004, Indiana courts have used court interpreter services in 203,032 cases. Timeline - 2002: Indiana Court Interpreter Certification training program; 2003: Grant distributed; 2004: Court Interpreter Advisory Committee; 2005: Swearing in the first group of court certified interpreters; 2017: Language Access Advisory Committee; 2019: Video remote interpreting and Language Access Plan.*

### III. Needs Assessment, Data Collection, and Early Identification

In order to provide meaningful language access to the trial courts throughout the state, it is critical that the Indiana judicial branch understand the demographics of the population served throughout its ninety-two counties and be responsive to changing populations and needs as early as practicable. To this end, the judicial branch will continue to engage in, and further improve, the early and ongoing identification of language needs in courts across the state.

#### A. Data Collection and Analysis

Currently, the Office of Judicial Administration primarily collects interpreter usage data from LanguageLine Solutions® invoices and through applications by individual counties for interpreter grants. Specifically, LanguageLine Solutions® provides monthly usage reports that help identify language trends throughout the state courts. In addition, courts that receive OJA grant money for court interpreters must submit quarterly reports that list the number and type of interpreted cases, the hours of interpreter use per quarter, the names and credential status of interpreters used, as well as the number of times each interpreter was used. This data can assist the OJA in tracking local court use of court interpreters and further identify language trends around the state. Additionally, two-thirds of courts in the state utilize Odyssey Case Manager (Odyssey) as their case management system. Through Odyssey, the OJA can obtain interpreter use information, breaking down languages provided by court (circuit, superior, small claims, city/town) and by county. Recent developments in Odyssey have included updated information for language drop-down options (specifically to address multiple ethnic languages from Myanmar). Additionally, the Quarterly Case Status Report completed by courts via the Indiana Courts Online Reports (ICOR) application provides data on interpreter usage and the expenses associated with it. The OJA also collects information on interpreter use based on reporting to the OJA by governmental and non-governmental entities.

To further improve data collection and assessment of language needs, the Language Access Task Force has a data workgroup to identify the state's LEP and deaf or hard of hearing populations that might not be reflected by looking at court interpreter usage data alone. The workgroup is also tasked with targeting sources of state and county/city demographic information other than the more traditional sources, such as the Census and American Community Survey. To that end, the data workgroup is working to identify local sources throughout the state, including immigrant and refugee organizations that can inform on

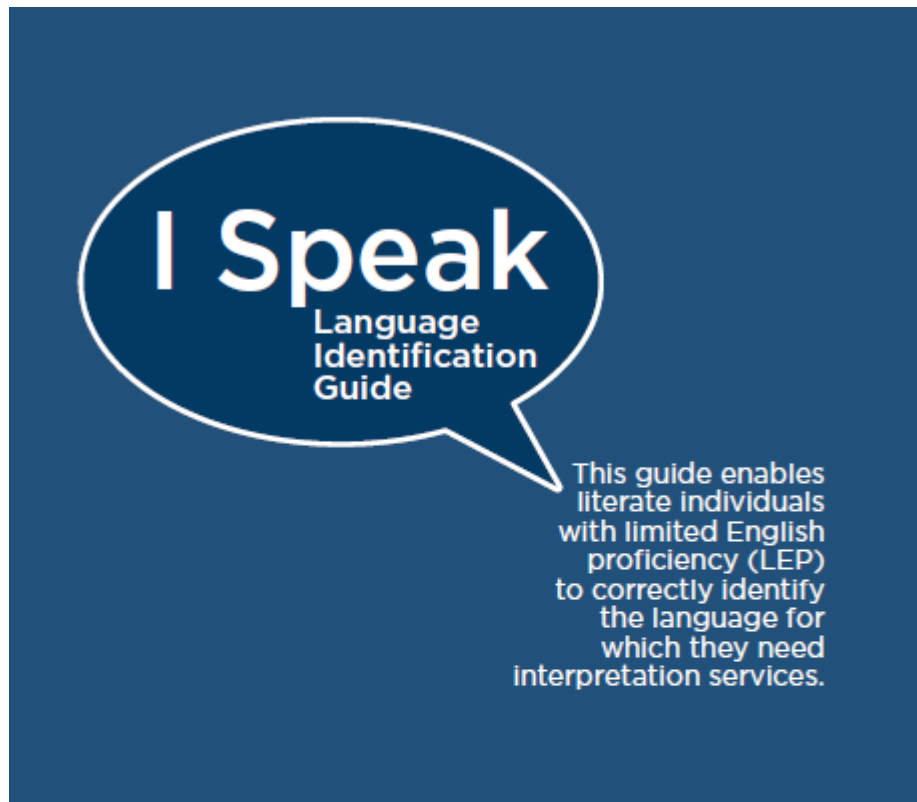
language needs in their communities as well as provide information on emerging languages and changing language trends.

## B. Early and Ongoing Identification of Language Needs

Together with efforts to anticipate community language needs through improved data collection, reporting, and analysis, trial courts in Indiana will continue to develop and formalize mechanisms to identify a court user's language access needs as early in the process as possible. Early identification of a court user's language needs not only benefits that user individually but allows the court to be better prepared and reduce inefficiencies caused by the need for continuances or other delays, and overall promotes the view that courts provide equal access and justice. Within the context of early identification mechanisms, the Indiana trial courts have several systems in place. These mechanisms fall into four broad categories:

### 1. Self-identification:

Local courts can employ—and several already have employed—tools to assist court users to identify their language needs by themselves, including signage and [language identification guides](#), which the Supreme Court utilizes and promotes through its website. These guides can be used by court staff to help identify the language(s) spoken by a court user, enabling the court to locate the appropriate interpreter. The guides identify eighty different languages, as well as ten indigenous languages spoken in Mexico and Central America and twenty-five ethnic languages of Myanmar/Burma.



The Indiana Supreme Court is committed to ensuring meaningful access to justice to all, regardless of language proficiency.

The Court is pleased to provide this language identification guide to ensure that the correct interpreter is used for LEP persons.

The guide is a resource for all who work in the justice system, to ensure that we communicate effectively, meaningfully, and accurately in all of our encounters.

*Figure 4: I Speak Language Identification Guide Booklet*

## 2. Court staff and judicial officer identification of needs:

Court staff and judicial officers are in a unique position to determine whether an interpreter is necessary for the court user's encounter with the court, whether as part of a court proceeding or other court business. They should use the current language identification guides, so they can identify a court user's language to secure the necessary services. Hard copies of the [language identification guides](#) have been distributed to trial courts and are available upon request. If it appears that an individual has difficulty communicating due to a language barrier, court staff or a judicial officer can inform the LEP or deaf or hard of hearing person regarding their right to

have an interpreter provided by the court for any court proceeding in order to ensure meaningful access to the courts.

### **3. Case management system tracking of needs:**

As referenced above, most trial courts in Indiana have Odyssey as a case management system, enabling them to track interpreter needs for any given case

anytime a court proceeding or event is scheduled. To the extent not already done, language need should be flagged both through case and party records. Flagging within a given case assists court staff in securing an interpreter for the LEP or deaf or hard of hearing person for court proceedings in a case. Similarly, by flagging the record of the party, other new case filings involving that party will alert staff that an interpreter will be required. Courts that use Odyssey as a case management system are also able to share information and look up each other's records, thus allowing all courts to identify language needs of a court user in another court.

### **4. Justice partners' identification and notification of needs:**

Justice partner agencies, such as local law enforcement, jails and other correctional facilities, the Family and Social Services Administration, attorneys, social workers, and legal aid agencies as well as other community service providers whose clients come into contact with the court, are in a key position to be able to notify the court about an LEP or deaf or hard of hearing person's need for an interpreter, whether for an upcoming court hearing or a court event. Establishing formal protocols for the notification to come from justice partners, taking into consideration local infrastructure and agency responsibilities, can significantly improve early identification of language needs.

## IV. Language Access in Court Proceedings

While several methods for providing language access are used outside of the courtroom, during courtroom proceedings, the primary method of providing language access services is using court interpreters. Below is a discussion of the current policies and procedures for language access in court proceedings, including (1) the provision and appointment of court interpreters, (2) remote interpreting, (3) interpreter qualifications, and (4) interpreter discipline and complaint processes.

### A. Provision and Appointment of Court Interpreters

The appointment and provision of interpreters at the trial court level is the responsibility of each court. Each court schedules and pays for services, either through its own county funds or Supreme Court grant funds. Courts may either employ staff interpreters, contract directly with freelance interpreters, or go through language service agencies that provide interpreters. The Supreme Court's [Interpreter Services for Courts](#) page provides guidance to local courts regarding (1) when to request an interpreter; (2) proceedings for which a telephonic interpreter may be appropriate; (3) the use of qualified interpreters and avoidance of non-qualified individuals such as family members, friends, minors, or bilingual staff and attorneys; and (4) payment of interpreters.

The Indiana Supreme Court also provides an online [Certified Interpreter Registry](#) that local courts can use to locate certified and qualified interpreters in the state. While the registry offers courts the ability to search for an interpreter on their own, the OJA can help in locating an interpreter for languages of lesser diffusion.<sup>23</sup>

Regarding payment of interpreters, courts are advised that they must pay for interpreter services and are urged to contact the OJA regarding questions on who is responsible for the payment of the interpreter. Generally, the Supreme Court provides grants to trial courts to supplement the cost of their in-person interpreters. ([Program guidelines and the grant application](#) are available

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<sup>23</sup> The OJA is also currently working with a customer relationship management (CRM) platform to improve the functionality of the statewide interpreter database. The merging of the current database with a CRM will enable outside users, such as judges, court staff, and attorneys to identify interpreter availability. A CRM will also allow interpreters to update their information, register for any required continuing education credits, and update their availability information.

online.) In addition to in-person certified interpreters, the Supreme Court has provided every court in the state with access to LanguageLine, a telephonic interpretation service that can provide language services in over 240 languages. Costs associated with the use of LanguageLine Solutions® by local courts are covered by the Indiana Supreme Court.

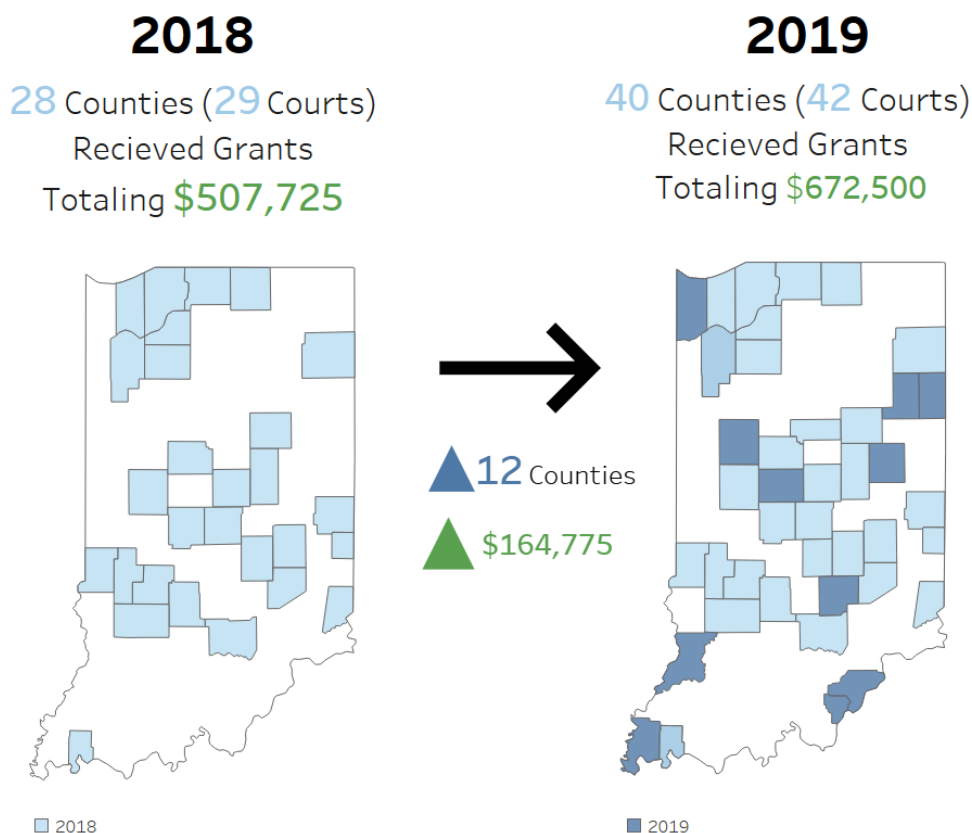


Figure 5: Court Interpreter Grant Award Recipient Data

There is no current Indiana Supreme Court rule that requires local courts to provide court interpreters to an LEP court user, at no cost to the court user.<sup>24</sup> The Indiana Supreme Court held in *Arietta*, that when a litigant is found indigent, the public should pay for the interpreter whether the interpreter is used as a “proceeding interpreter” or “defense interpreter.” Other than the Indiana Code sections referenced in the introductory sections of this LAP, which provide for interpreters at either the court’s or the court user’s expense, and the ADA (which is clearer in the

<sup>24</sup> See *Arietta v state*, 878 N.E.2d 1238 (Ind. 2008). The Indiana Supreme Court defined that proceeding interpreters are interpreters for witnesses that both the prosecution and defense will use, and defense interpreters are interpreters used solely for the defendant. When a litigant is found indigent, the public should pay for both the proceeding and the defense interpreters, but if a litigant is not indigent, the court should pay only for proceeding interpreters.

need to provide an interpreter for deaf or hard of hearing individuals), a local court is not required under Indiana law to appoint and provide an interpreter. Therefore, litigants or witnesses may find themselves needing to provide their own interpreter and assume the cost themselves.

Similarly, there currently is no requirement that only certified or credentialed interpreters must be used in all court proceedings. However, the Indiana Supreme Court strongly encourages trial courts, as a best practice, to use court certified interpreters; in fact, many trial courts throughout the state only use certified or otherwise qualified interpreters under the Supreme Court's Certification Program addressed below. Further, a recent needs assessment effort led by the Language Access Task Force revealed that many trial courts prioritize the use of certified court interpreters whenever possible and make reasonable efforts to use qualified interpreters in languages for which there is no certification process. In order to promote the use of court certified interpreters, OJA staff works with local courts to locate certified interpreters when a local court requests assistance.

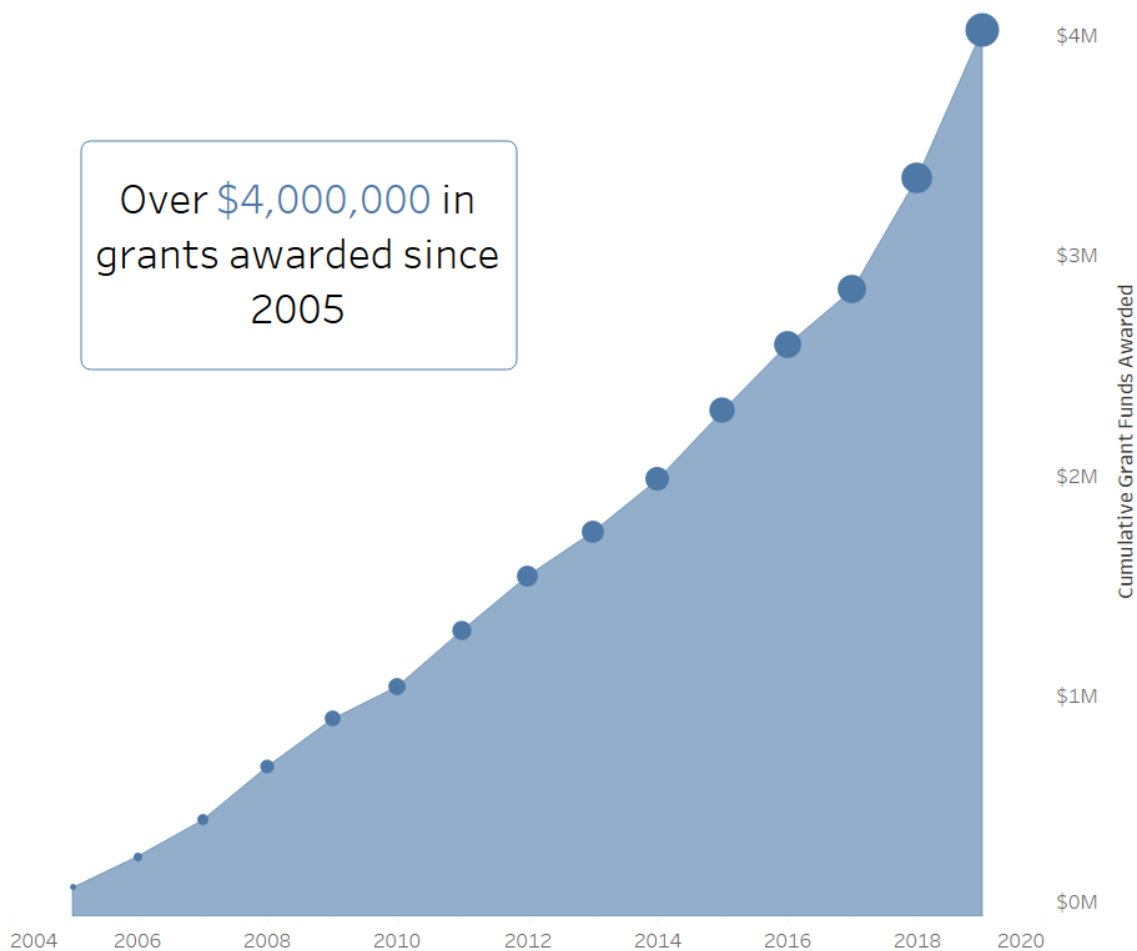
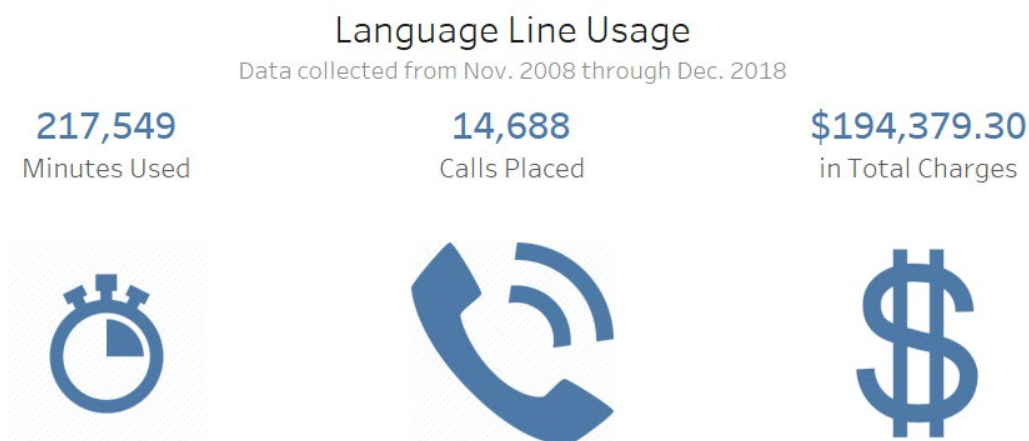


Figure 6: Cumulative Grant Funds Awarded by Year

## B. Remote Interpreting

As mentioned, every court in Indiana has access to the services of LanguageLine Solutions®, a telephonic interpretation service contracted and paid for by the Indiana Supreme Court. In its guidance, the OJA informs courts that use of telephonic interpreting is intended for brief, routine matters only. It further provides that an in-person interpreter should be used for evidentiary proceedings, including trials, as well as guilty plea hearings and other contested proceedings.

The judicial branch, through a working group of the Language Access Task Force, is in the process of implementing a video remote interpreting (VRI) pilot project in five counties (Allen, Marion, Shelby, Dearborn, and Hamilton Counties), using an outside vendor to provide the service. The goal of this project is to test the technology and, if applicable, develop recommendations for its appropriate use. While in-person interpretation is always preferable, where there are not enough interpreters to meet all language access needs, the use of technology can help prioritize existing resources by assigning in-person interpreters where their presence is most critical and using telephonic or video remote interpreting for other matters. In fact, remote interpreting can ensure a higher quality interpreter is available to assist in a court proceeding. For example, rather than rely upon a non-qualified interpreter, a certified interpreter from another county or state can remotely interpret.



*Figure 7: Telephonic Interpreting Services Usage*

## C. Interpreter Qualifications

As described in Section II(c) regarding the Indiana judicial branch's language access initiatives, the judiciary created a Court Interpreter Certification Program in 2002, and a pathway for interpreters in languages without an oral exam to become qualified. The judiciary's [Court Interpreter Certification](#) page provides information for candidates as well as courts to understand the certification process, as well as access the registry of certified interpreters. In addition to certifying Indiana interpreters, the Supreme Court offers reciprocity for interpreters who have been certified in another jurisdiction.

The OJA also offers an orientation program for prospective interpreter candidates that explains the process for becoming certified. On the [How to get certified](#) page, prospective interpreters can access a self-assessment guide to help them determine their current language skills for certification. The web page also sets forth the steps to certification and other resources for exam preparation and working in the courts.

The steps to certification broadly include the following:

1. Successful completion of an online English written exam preparatory course;
2. Attendance at a two-day orientation covering ethics, protocol, criminal procedure, and the modes of interpretation;
3. Passing an English written exam with a score of 80% or better;
4. Attendance at a two-day skill-building seminar on the modes of interpreting and an additional one-day simultaneous workshop;
5. Passing all three sections of the National Center for State Court's oral exam with a score of 70% or better on each section;
6. Submitting to and passing a criminal background check; and
7. Swearing to comply with the Interpreter Code of Conduct.

For prospective interpreters in languages not on the list of [certification-eligible languages](#), instead of the oral exam, they must take and pass an oral proficiency interview administered by a third-party organization specializing in legal oral proficiency assessments. For qualification in American Sign Language, candidates must submit their Registry of Interpreters for the Deaf (RID) certification at the skills-building training event.

The OJA is also in the process of developing an online 66-hour court interpreter training course which will cover the same topics as the in-person training sessions currently provided. Additionally, the OJA is developing continuing education requirements for all interpreters on the

registry and will be offering 40 hours of Continuing Education Credits that will be available online, covering the following topics:

- a. Legal Interpreter Ethics
- b. Advanced Consecutive and Simultaneous Training
- c. Legal Terminology and Research
- d. Criminal and Civil Procedures

## D. Interpreter Discipline and Complaint Mechanism

The Indiana Rules of Court set forth the [Interpreter Code of Conduct and Procedure & Disciplinary Process for Certified Court Interpreters & Candidates for Interpreter Certification](#), last amended in January 2018. The code of conduct sets forth the standard canons for the profession with the goal of ensuring meaningful access, due process, and equal protection for all court users and increasing the efficiency, quality, and consistency in the use of court interpreters.

The Rules include a disciplinary process for complaints against an interpreter problem such as an interpreter's performance or unethical or unprofessional conduct. These procedures apply to interpreters certified in foreign language interpretation by the Indiana Supreme Court as well as interpreter candidates seeking to be certified by the Indiana Supreme Court. Grounds for discipline, a complaint process (to be initiated within 180 days of the alleged conduct giving rise to the complaint), and possible sanctions are delineated in the Rules of Court in order to protect the integrity of the proceedings and ensure the quality of interpreting services provided by the court.

## V. Language Access Outside Court Proceedings

Many of the LEP and deaf or hard of hearing individuals who encounter the trial courts that make up the Indiana judicial branch never see the inside of a courtroom. However, these court users should have the same level of access to language assistance as those who participate in court proceedings. To that end, it is the goal of the Indiana Supreme Court that LEP and deaf or hard of hearing court users have meaningful language access to services in all interactions with the court.

There are a number of critical points of contact between court users and trial courts, including clerk's offices and counters, telephone assistance, self-service legal centers, alternative dispute resolution programs, probation departments, and the various offices operated by or managed

and supervised by the court and accessible to the public, including security at courthouse building entrances and law libraries operated within or in connection to court services. Additionally, it is critical that court websites, court-issued documents, forms, and materials are also accessible to LEP and deaf or hard of hearing court users. The public information found on the Indiana judicial branch's website should be accessible to LEP and deaf or hard of hearing individuals, and the branch should be committed to developing multilingual information to make this a reality.

For its varied locations, there are several language access services and resources that can be, and are, provided to ensure access by Indiana's LEP and deaf or hard of hearing court users. Those services available in the Indiana trial courts are discussed below.

## A. Language Identification Guides

As discussed earlier, the Supreme Court makes available, through its website, [language identification guides](#) (also known as "I Speak" cards) to be used by court staff at all points of contact with the public. The guides list over eighty languages, which court users can use to self-identify their primary language as the first step in the court's provision of language access services.

## B. Telephone Interpretation Services

Court staff may make use of LanguageLine, a provider of remote telephonic interpretation in all eighty languages listed on the "I Speak" card, and more, to obtain a telephonic interpreter to assist an LEP individual outside the courtroom. Every trial court is provided an access code to avail itself of the Indiana Supreme Court's contract with LanguageLine. In addition, trial courts utilize interpreting agencies with which they may contract locally for the provision of telephonic interpreters, though LanguageLine is the primary provider of these remote services.

## C. Bilingual Employees

The use of bilingual staff to provide in-language assistance to LEP court users is a very cost-effective and efficient way to ensure access for LEP litigants in court. Currently, the number of bilingual staff members throughout the Indiana judiciary is limited,<sup>25</sup> but the Task Force is making efforts to increase this number. Bilingual staff are particularly effective for court-ordered,

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<sup>25</sup> Responses to a 2018 survey indicated that eight responding courts (11% of respondents) utilized bilingual staff to provide language services outside of the courtroom.

court-operated services like mandatory settlement conferences, probation, or other types of dispute resolution. In-language assistance by staff in these programs is an effective way of ensuring court users have meaningful access to these services.

There are currently no standards in place for the assessment of bilingual proficiency of court staff. The Supreme Court provides a [workplace Spanish Training program](#) for court staff to learn fundamental Spanish vocabulary. As the program page advises, the course will not result in fluency, but is intended to help staff communicate simple information regarding courtroom procedures, directional information, greetings and introductions, dates and times, and other basic information.

## D. Deaf and Hard of Hearing Accommodations

Under the ADA, trial courts provide interpreters for deaf and hard of hearing court users when requested. This may include obtaining a sign language interpreter, a Certified Deaf Interpreter (CDI), or providing assistive listening or other communication devices.

## E. Interpreter Provision for Court-Ordered<sup>26</sup> Programs

Often, compliance with a court order or meaningful engagement in a case, such as family law matters and others, is contingent on participation in court-ordered programs. Where those programs are court-operated, trial courts should provide language access services via bilingual staff or through the appointment of interpreters. Guidelines regarding the provision of interpreters for these programs do not currently exist but will be considered by the Language Access Task Force as it works to implement this LAP.

For court-ordered programs that are not operated by the court, judicial officers will receive training regarding the need to ensure that participation in these programs, if required for compliance with court orders, should include consideration for the language needs of the court user ordered to participate. Courts are encouraged to work with justice and community partners to ensure language access services are provided in programs which receive referral from the court.

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<sup>26</sup> Court ordered, court operated programs are those required for compliance with a court-ordered proceeding that are under the control of the court, such as mandatory mediation or settlement conference sessions.

## F. Translated Materials and Web Content

The Language Access Task Force is also charged with the responsibility of statewide translation efforts in Indiana. There are also efforts to translate protective order forms soon. Further, plans are underway for the Language Access Task Force to work with the Coalition for Court Access for Self-Represented Litigants to make court forms available in languages other than English.

Other translated information includes parenting time and child support guideline information (in English and Spanish), as well as a self-service website with self-help content translated into Spanish, so that Indiana residents can access this content online anywhere in the state. There is also a [bilingual video with information on small claims court](#) and a [Spanish manual pertaining to the juvenile justice system](#). The state's trial courts utilize these tools to better provide multilingual information to LEP court users accessing local courts and services.

Translation needs at the local level are currently the responsibility of local courts. A few trial courts have notices regarding the availability of language access services, and many of these courts have these notices translated into languages other than English, particularly in Spanish and other languages commonly encountered in a county. Several courts also have translated handouts, such as self-help legal information, as well as request for interpreter forms and glossaries of legal terms in various languages.

Translated audio and video materials are also an effective way to reach LEP and deaf or hard of hearing court users. Video with captioning (in ASL or other languages) can be hosted on court websites, as can multilingual translations of court information. Fewer than a handful of courts currently use an advisement of rights video that is available in English and Spanish.

Efforts to advance language access services throughout the state will include exploring the development of standardized notices and translations that local courts may use in key locations. Efforts to augment the judiciary's multilingual audio-visual materials will also be explored. With all translation efforts, and as further discussed in Section VI on Translation, the OJA will consider the development of standardized material that may be adapted by local courts for their use.

## VI. Translation Protocol Guidelines

As discussed in Section V, the Supreme Court drives the statewide translation efforts in the state, and existing translations were included as part of that discussion. By and large, translated materials are currently available in Spanish and English only. Some local courts, driven by need

and demand, have engaged in further efforts, and at least one court will soon post their local language access policy on its website in Spanish and Burmese in addition to English.

To the extent possible, translation of materials starts with the creation of English documents that are in plain language, are user-friendly with no or minimal (if necessary) use of legalese, and within readability goals for the intended population. By having accessible documents and information in English, access for everyone (English speakers with low literacy levels as well as LEP populations) is improved. Translating more accessible documents into foreign languages improves service to LEP court users.

As a policy for the judicial branch, the Language Access Task Force will consider the development of translation guidelines that include instruction on using plain language, qualified translators, and translation reviewers with legal expertise when undertaking translations. Additionally, the guidelines will address information on how to prioritize documents for translation based on usage, criticalness, and effectiveness. Once those guidelines are developed for statewide translations, they may be shared with local courts, particularly to those that undertake substantial translation efforts locally to better serve their LEP communities.

## VII. Judicial Branch Training

Training for judicial officers, court employees, and court administrators is a critical component of any language access plan and of efforts to ensure meaningful language access for LEP and deaf or hard of hearing individuals to the courts. Language access planning must include consistent training efforts to ensure awareness of policies and responsibilities, and the appropriate deployment of language access tools, from interpreters to translation to signage.

### A. Training for Judicial Officers

For this plan and statewide language access efforts to succeed, judges must be knowledgeable regarding policies and procedures at the state level, best practices recommended for local courts, and all aspects of language access services. This includes training on working with spoken language and ASL interpreters, interpreter qualifications, the appropriate use of remote technologies, and cultural competence.

Training efforts to date have been conducted by OJA staff at judicial conferences, including training on Title VI, the ADA, and best practices for working with interpreters.<sup>27</sup> However, at least

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<sup>27</sup> In collaboration with the OJA Education Division, recent efforts have included presentations on Title VI and best practices regarding working with interpreters. Presentations have taken place at various judicial

one local court has scheduled significant training for court staff and judicial officers, with several sessions dedicated to interpreter use. Future initiatives will include more comprehensive training efforts that are more broadly available across the judicial branch.

## B. Training for Court Employees and Administrators

Court employees and administrators should be familiar with language access and ADA policies for their court and the branch. In addition, front line staff, often the first points of contact with LEP and deaf or hard of hearing court users, must be trained on ways to identify language issues and understand what language access services may be appropriate and available. Similarly, all employees must be familiar with the legal requirements under the ADA in order to meet the needs of deaf or hard of hearing individuals.

# VIII. Public Notice, Outreach, and Dissemination

## A. Public Notice of the Language Access Plan

This Language Access Plan will be available to the public on the Indiana Supreme Court website. The Language Access Task Force, through its members and staff, will notify justice partners, community-based organizations, legal services providers working with LEP and deaf and hard of hearing populations, and relevant government agencies of the issuance of this plan as well as of any future updates.

## B. Community Outreach and Education

The Language Access Task Force, through its staff and members, will participate or help coordinate community outreach initiatives. These efforts will contribute to cementing public trust and confidence in the judicial branch and building relationships with court users from diverse backgrounds. In addition, they are critical to promoting greater understanding between court users and the court, including judicial officers and court staff.

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conferences, including the Spring Judicial Conference, the City and Town Court Judges Conference, the Senior Judges Seminar, and the mandatory General Jurisdiction Orientation for newly elected judicial officers.

To accomplish outreach initiatives, the Language Access Task Force has established a communication subcommittee. This subcommittee will lead the judicial branch's effort to inform communities about language services available at the court.

## IX. Monitoring of Language Access Plan and Services

In order to ensure the appropriate and successful implementation of this language access plan, there must exist a system for monitoring the plan and tracking the need for ongoing adjustments and necessary expansion. This system must include an effective complaint mechanism and quality control measures.

The Indiana judicial branch does not currently have a statewide formal complaint mechanism for the failure to provide language access services. However, the Interpreter Code of Conduct, referenced earlier, does provide for a complaint process related to interpreter disciplinary issues. This process would presumably also include complaints related to interpreter competence. While there is no formal monitoring process for court interpreters at the state level, most issues related to an interpreter's qualifications, or lack thereof, appear to be handled at the local level. On occasion, the staff attorney at the OJA may receive complaints from the public, which are investigated and resolved when possible. The more common complaints received relate to a court failing to provide an interpreter for a civil proceeding or using a non-certified interpreter.

### A. Responsibility for Monitoring and Maintenance of the Language Access Plan

The Indiana Supreme Court intends for this Language Access Plan be a dynamic, living document, which will change, grow, and adapt to changing and advancing needs in the Indiana judicial branch. The Language Access Task Force and OJA staff will implement, update, and monitor this LAP. OJA staff will review this LAP on an annual basis, or as needed depending on Language Access Task Force initiatives, and make any necessary changes based on that review.

The evaluation and monitoring of the plan will include the following:

- Assessing the frequency of language assistance requests at the trial court level, to the extent data is available;
- Assessing language needs and demographic data collected from various sources, as directed under the Needs Assessment section of this Language Access Plan, to assist the

OJA with prioritizing the need for additional services, translated materials, language access tools, and training and education, and help determine if new languages are emerging in different areas of the state;

- Staying informed regarding new laws or changes to existing laws, policies, or rules affecting any aspect of the provision of language access services;
- Determining whether court employees and judicial officers are adequately informed of the Indiana Supreme Court's language access policies and procedures and are effectively implementing them;
- Reviewing feedback from justice partners, stakeholders, and LEP and deaf and hard of hearing communities and court users; and
- Analyzing complaints received via the local courts or directly to the OJA or Language Access Task Force, or via any other avenue regarding the provision (or failed provision) of language access services, including interpreter performance, quality of translations, availability of information to the public, etc.

Any revisions and updates made to the plan will be communicated by posting on the Indiana Supreme Court's website as well as through other mechanisms (e.g., public notice, outreach, and dissemination) as laid out in Section VIII above. The most current revision is the operative Language Access Plan for the Indiana Judiciary.

## B. Monitoring by Local Courts

To the extent local courts have designated staff with responsibility over language access services, data, or other information on language access issues, that information should be shared, when practicable, with the OJA. This information exchange will enable the OJA to assess how the LAP is being implemented locally and what possible modifications or improvements may be needed in the future. This communication will also enable the OJA to understand local needs and prioritize statewide efforts in the development of language access tools that may be adapted by local courts. Finally, if local courts experience consistent problems with certain interpreters or interpreter service providers, that information should be shared with the OJA as the interpreter certification entity for the Indiana judicial branch.

## C. Complaint Procedures

Complaints regarding lack of language assistance services, or the quality of the services received, may continue to be brought to the attention of the OJA staff. If appropriate, complaints may also be brought locally to the clerk of the trial court and may then be relayed to the OJA. Complaints may be filed by court users, attorneys, community-based organizations, legal aid programs, justice partners, governmental agencies, court employees, and judicial

officers. The Indiana Supreme Court encourages trial courts to forward complaints regarding an interpreter's performance or unethical or unprofessional conduct to OJA program staff, who will conduct a formal investigation.

## Conclusion

This Indiana Supreme Court Language Access Plan is intended as the language access policy of the Indiana judiciary. It is a long-term language access planning document, to be updated, changed, and adapted as the needs of the judicial branch and Indiana's limited English proficient and deaf or hard of hearing populations change. In addition to the existing language access processes and services outlined here, the Indiana judiciary recognizes the need for ongoing and evolving language access services in response to the needs of those accessing the courts. Therefore, the judiciary intends to take additional steps to continue to support implementation efforts of this plan. These next steps will include, but are not limited to: the further exploration of data collection methods pertaining to court interpreter use and language needs; the development of statewide guidance regarding the use of trained court interpreters; the further development of resources and tools for the delivery of language access services outside of the courtroom; the formulation of an effective public education campaign regarding the provisions of this language access plan and the availability of language access services in the Indiana judicial branch; and the development and implementation of an ongoing monitoring process to ensure that this plan is effectively addressing language access in the Indiana judicial branch. These efforts, under the direction and guidance of this language access plan, will further the Indiana judiciary's commitment to the ongoing development and improvement of language access services and initiatives and will enhance language access services for Indiana's court users statewide.

## Appendix A: Definitions<sup>28</sup>

1. **Direct “In-Language” Communication** – Monolingual communication in a language other than English between a multilingual staff and an LEP person (e.g., Korean to Korean).
2. **Effective Communication** – Communication sufficient to provide the LEP individual with substantially the same level of access to services received by individuals who are not LEP. For example, staff must take reasonable steps to ensure communication with an LEP individual is as effective as communications with others when providing similar programs and services.
3. **Interpretation** – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.
4. **Language Assistance Services** – Oral and written language services needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, the services, activities, or other programs administered by an agency or department that receives federal assistance.
5. **Limited English Proficient (LEP) Individuals** – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).
6. **Meaningful Access** – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.
7. **Multilingual staff or employee** – A staff person or employee who has demonstrated proficiency in English and reading, writing, speaking, or understanding at least one other language as authorized by his or her component. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.

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<sup>28</sup> These definitions are provided by the Department of Justice on their own [Department of Justice Language Access Plan](https://www.justice.gov/sites/default/files/open/legacy/2012/05/07/language-access-plan.pdf) (March 2012) available at: <https://www.justice.gov/sites/default/files/open/legacy/2012/05/07/language-access-plan.pdf> (archived at <https://perma.cc/X97B-5YQ6>).

8. **Primary Language** – An individual’s primary language is the language in which an individual most effectively communicates.
9. **Program or Activity** – The term “program or activity” and the term “program” mean all the operations of an agency or department that receives federal assistance.
10. **Qualified Translator or Interpreter** – An in-house or contracted translator or interpreter who has demonstrated his or her competence to interpret or translate through court certification or is authorized to do so by contract with an agency or department or by approval of his or her component.
11. **Sight Translation** – Oral rendering of written text into spoken language by an interpreter without change in meaning based on a visual review of the original text or document.
12. **Translation** – The replacement of written text from one language (source language) into an equivalent written text in another language (target language).
13. **Vital Document** – Paper or electronic written material that contains information that is critical for accessing a component’s program or activities or is required by law.