

¿Mi Trabajo es su Trabajo? The Use of Licensed Foreign Language Interpreters in Municipal Court

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Course Objectives – Why am I here?



- Identify the laws concerning the use of foreign language interpreters in municipal court
- Discuss the potential ethical and legal implications of using unlicensed/unqualified interpreters for court proceedings
- List resources available for municipal courts regarding the use of foreign language interpreters

What is an “Interpreter”?



- **The American Heritage Dictionary:** “one who translates orally from one language into another”
- **Dictionary.com:** “a person who provides an oral translation between speakers who speak different languages”
- **Black’s Law Dictionary:** “a person sworn at trial to accurately translate the testimony of a witness who is deaf or speaks a foreign language.”

So what Difference does an Interpreter make?

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If there is not effective interpretation in Court, a criminal conviction will be overturned, as this violates the defendant's fundamental right to confrontation.

What is a Licensed Court Interpreter?

- An individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.
- Sec. 57.001 (5) Texas Government Code

What are the Important Laws for Licensed Interpreters?

- Chapter 57, Texas Government Code, "Court Interpreters"
- Title 16, Texas Administrative Code, Chapter 80, "Licensed Court Interpreters"
- Section 38.30, Code of Criminal Procedure, "Interpreter"

Where else is Information about Licensed Interpreters?

- Texas Attorney General Opinion JC-0584, Nov. 2002
- 6th Amendment, U.S. Constitution (The Confrontation Clause)
- Case Law

**Chapter 57
Texas Government Code**

- Generally, Chapter 57 addresses requirements for court interpreters, such as how interpreters are licensed, when they must be licensed, and when they need not be licensed.
- Chapter 57 also defines many terms related to court interpreters (*i.e.*, licensed court interpreter)

**57.001 Definitions
“Certified” vs. “Licensed”**

- **Certified** court interpreter is an individual who is a qualified interpreter as defined in Article 38.31, Code of Criminal Procedure, or Section 21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual.
- **Licensed** court interpreter is an individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

**57.002 - When is a Licensed
Interpreter Necessary?**

- (a) A court **shall** appoint a licensed court interpreter if a motion is filed by a party or requested by a witness.
- (b) A court **may**, on its own motion, appoint a licensed court interpreter.
- (b-1) An appointed interpreter must hold a license that includes the appropriate designation that indicates the interpreter is permitted to interpret in that court (“basic” v. “master”).

Any Exceptions?

- Yes (of course . . .)
- Section 57.002(c): Exceptions to Licensing Requirements
 - In a **county** with a **population of less than 50,000**, a court may appoint a spoken language interpreter who is not a licensed interpreter.

57.002(d) - What about languages other than Spanish?

Subject to Subsection (e), in a county with a population of 50,000 or more, a court may appoint a spoken language interpreter who is not a licensed court interpreter if:

- (1) the language necessary in the proceeding is a **language other than Spanish**; and
- (2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

57.002(e) - If not a Licensed Interpreter, Who Then?

A person appointed under Subsection (c) or (d):

- (1) must be qualified by the court as an expert under the Texas Rules of Evidence;
- (2) must be at least 18 years of age; and
- (3) may not be a party to the proceeding.

Licensed Court Interpreter Board

- Section 57.042. establishes a licensed court interpreter advisory board to advise the Texas Commission of Licensing and Regulation regarding the adoption of rules and the design of a licensing examination.

57.043 Issuance of License

- (a) The Executive Director of the Texas Department of Licensing and Regulation shall issue a court interpreter license to an applicant who
 - (1) can interpret . . . ;
 - (2) passes the examination; and
 - (3) possesses the other qualifications for the license required
- (c) License is valid for one year

57.043(d) "Basic" v. "Master"

A license must include at least one of the following designations:

- (1) a **basic** designation that permits the interpreter to interpret court proceedings in justice courts and municipal courts that are not municipal courts of record, other than a proceeding before the court in which the judge is acting as a magistrate; or
- (2) a **master** designation that permits the interpreter to interpret court proceedings in all courts in this state, including justice courts and municipal courts described by Subdivision (1).

Section 57.049 Prohibited Acts

A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under this chapter.

57.050 Prohibited . . . but is it a Crime?

YES . . .

(a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter. An offense under this subsection is **CLASS A MISDEMEANOR**.

Under (b) also subject to an administrative penalty.

Title 16, Texas Administrative Code, Chapter 80

- Chapter 80 was created by the authority of Title 2, Texas Government Code, Chapter 57 and Title 2, Texas Occupations Code, Chapter 51
- This chapter addresses the licensing requirements and continuing education for court interpreters – “the rules”

80.20 Licensing Requirements

(a) Prior to performing court interpretation services, a person first **must obtain a court interpreter license** from the department with a language endorsement for each language that the applicant will interpret.

80.70 Responsibility of an Interpreter

- (a) A licensee **must provide** the following written notification to the court: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599." The notification **shall** also be included on all contracts and invoices for court interpreter services.
- (b) A licensee **shall** present their court interpreter license upon the request of a court or an officer of the court.

80.100 Interpreter Ethics

- Code of Ethics and Professional Responsibility
- While interpreters must develop their own, well-informed ethical judgment, 80.100 lists nine canons which set forth fundamental ethical precepts for court interpreters to follow.

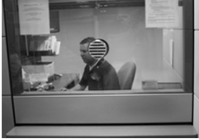
**Code of Criminal Procedure,
Art. 38.30 "Interpreter"**

- (a) When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter **must** be sworn to interpret for the person charged or the witness.

(a-1) A qualified telephone interpreter may be sworn to interpret for the person in the trial of a Class C misdemeanor or a proceeding before a magistrate if an interpreter is not available to appear in person

Texas Attorney General Opinion No. JC-0584 November 2002

Chapter 57 does apply to a plea in Justice [or Municipal] Court
But what about a clerk who converses with a defendant at the window?
Are you being an Interpreter?
What if you take his plea?



Texas Attorney General Opinion No. JC-0584 November 2002

“A court clerk who merely converses with a defendant in a language other than English does not ‘act as a licensed court interpreter’ . . . provided that the clerk is not acting as a translator between the defendant and a third person.”

**Texas Attorney General Opinion
No. JC-0584 November 2002**

- Court will have discretion in deciding the appropriateness of appointing an interpreter upon motion of defendant or request of witness (i.e. does the person really not understand and speak the English language)
- In criminal cases must remember defendant has constitutional right to interpreter.

**Texas Attorney General Opinion
No. JC-0584 November 2002**

Remember, Chapter 57 applies to a plea in Justice [or Municipal] Court
But what happens when a defendant comes to the window and . . .
He's asking for help in court?
Is this a "motion" . . .
Do you call for an Interpreter?



**What about case law?
Ridge v. State**

Ridge v. State, 205 S.W. 3d 591, 595-97
(Waco 2006, pet. ref'd)

When a licensed court interpreter is required by statute, no objection is needed to preserve error

Where the record is silent as to the interpreter's qualifications, error cannot be presumed.

So I know I need one . . . How do I Find an Interpreter for my Court?

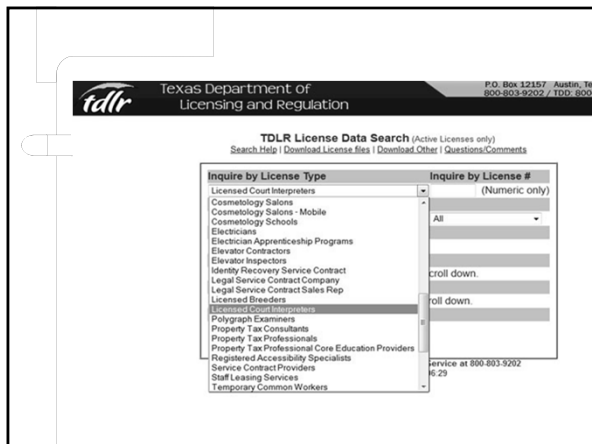
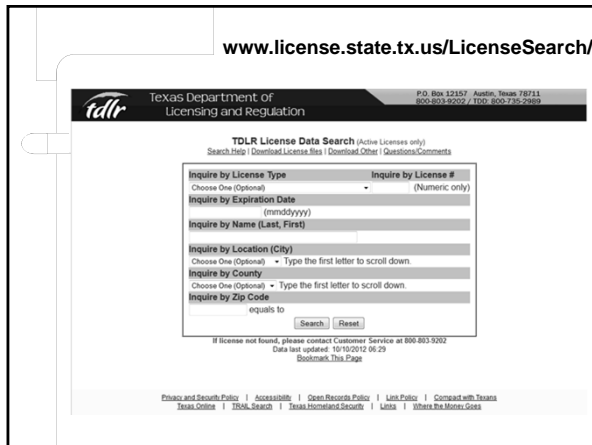
SEARCH: <http://www.tdlr.state.tx.us/>

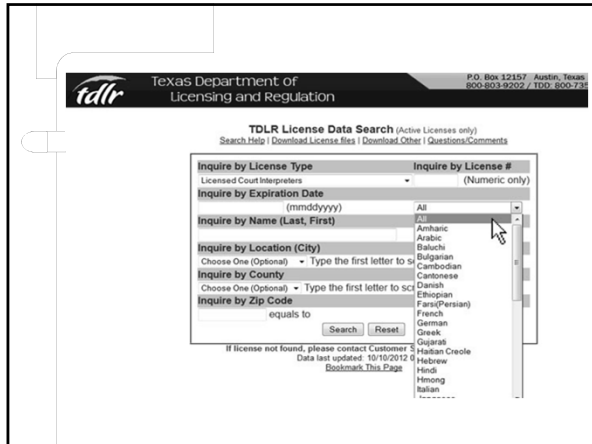
WHY? In County larger than 50,000 must appoint a LICENSED court interpreter.

Remember, if other than Spanish, 57.002(d) of the Government Code requires the court to make a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding BEFORE appointing a non-licensed interpreter

The screenshot shows the TDLR website homepage. At the top, the URL www.tdlr.state.tx.us is displayed. The header includes the TDLR logo and navigation links: Home, Board / Commission Meetings, Press Releases, Employment, E-Mail Updates, About TDLR, and Contact. A search bar is also present. The main content area features the heading "The Umbrella Licensing Agency of Texas" and a brief description of the agency's role. Below this, there are several icons representing different services: Renew / Apply for a License with TDLR, Search Licenses and Regulations, Tools for Home and VPS, DREAM - report Commission Items, and APPL - report application information. A footer section contains various policy links such as Privacy and Security Policy, Accessibility, Open Records Policy, Link Policy, and Compliant with Texas.

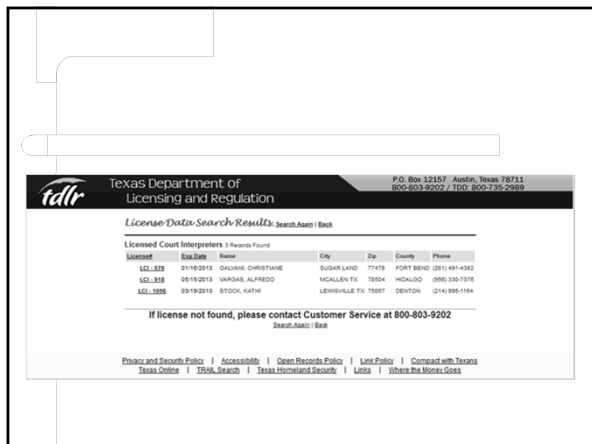
This screenshot is identical to the one above, but with a mouse cursor hovering over the "Search Licenses or Projects" link in the navigation menu. The cursor is positioned over the text "Search Licenses or Projects" in the menu bar.





Hypothetically . . . What to do if this happens?

- A juvenile's brother (16 years old) is allowed to translate for his mother from English to Spanish in court. Did the court fulfill its obligations?
- What difference if you were in a county of less than 50,000 people?
- What difference if it were in German instead?
- Would it make a difference if it were German and the brother was 18?

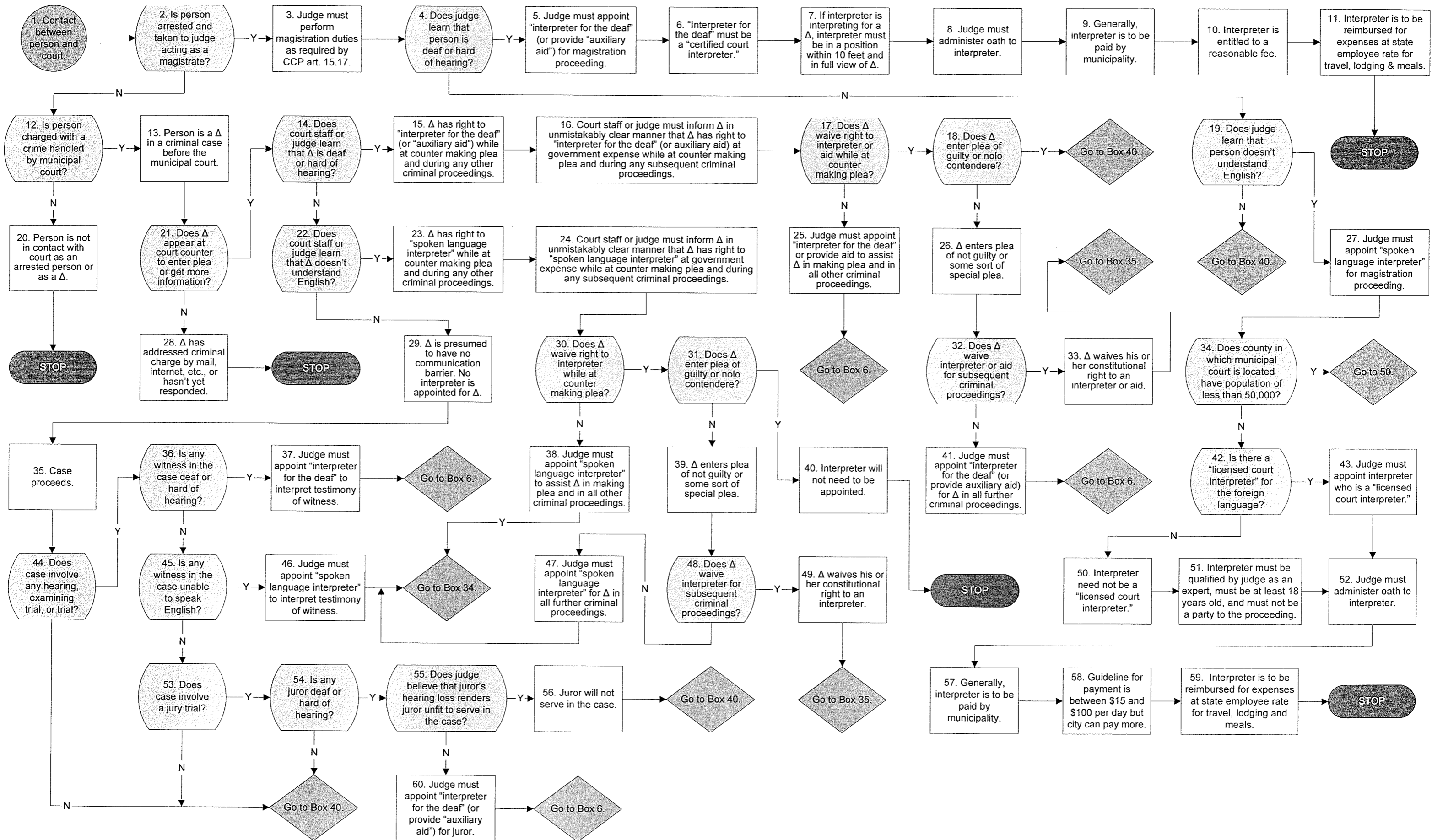


**How do I keep up with this?
Where can I get more info?**

- Sign up TDLR E-mail Subscriber Notification
<http://www.license.state.tx.us/newsletters/TDLRnotificationLists.asp>.
- www.tajit.org (Texas Association of Judiciary Interpreters and Translators)
- www.najit.org (National Association)
- www.oag.state.tx.us (Office of the Attorney General)

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FLOWCHART FOR COURT INTERPRETERS IN MUNICIPAL COURTS -- OCTOBER 2004



Δ = defendant