

## Juvenile Law Case Summaries

By

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### ***Interpreter not required for parent of juvenile charged in justice or municipal court [JC-0584] (03-1-02).***

On November 26, 2002, the Texas Attorney General opined that Chapter 57 of the Government Code does not require the appointment of an interpreter for the parent of a juvenile charged with a criminal offense in a justice or municipal court.

03-1-02. Attorney General Opinion No. JC-0584, 2002 WL 31674922, 2002 Tex.Ag.Lexis \_\_\_\_ (11/26/02) [Texas Juvenile Law (5th Edition 2000)].

Re: Whether chapter 57 of the Government Code requires the appointment of licensed court interpreters in certain circumstances, and related questions (RQ-0558-JC)

The Honorable Florence Shapiro  
Chair  
Senate Committee on State Affairs  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711-2068

Dear Senator Shapiro:

You ask about chapter 57 of the Government Code, a recently enacted statute that establishes qualifications for court interpreters for hearing-impaired individuals (interpreters for the deaf) and individuals who do not communicate in English (spoken-language interpreters) and requires courts to appoint qualified court interpreters. Your questions focus on the appointment of spoken-language interpreters and the payment of their fees in justice court proceedings.

We conclude that chapter 57 applies to a plea in a misdemeanor case in justice court, but that a court clerk who merely converses with a defendant in a language other than English does not "act as a licensed court interpreter" within the meaning of chapter 57. In either a civil or criminal proceeding, whether a party has filed a motion for or a witness has requested the appointment of an interpreter will depend upon the facts and is a question for the trial court in the first instance. The court may grant or deny such a motion or request. In a criminal proceeding, a court must also take into account the defendant's constitutional right to an interpreter and article 38.30 of the Code of Criminal Procedure. Chapter 57 establishes qualifications for interpreters appointed in criminal cases under the authority of article 38.30. If the only person who is licensed to interpret in a particular language resides in a distant location, a court in a populous county would be required to appoint that person. On the other hand, if there is no interpreter licensed to interpret in a particular language, the appointment of an unlicensed person may be within a court's inherent power. Finally, we conclude that chapter 57 does not alter preexisting law on the payment of appointed court interpreters. It does not require counties to pay for spoken-language interpreters in civil cases. Courts retain their authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter's compensation and to direct how an interpreter will be paid in civil cases. A county may not require a court to select an interpreter from an interpreter service under contract with the county, although a court may choose to select such an interpreter.

#### I. Legal Framework

A. Statutes Predating Government Code Chapter 57 [omitted]

B. Government Code Chapter 57

Now we turn to chapter 57 of the Government Code, the new law that is the focus of your query. It generally requires the appointment of a certified or licensed court interpreter, see Tex. Gov't Code Ann. § 57.002 (Vernon Supp. 2002), and provides for certification and licensing. It does not address the payment of interpreters.

For purposes of chapter 57, a "certified court interpreter" is an interpreter for the deaf "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 Texas Commission for the Deaf and Hard of Hearing to interpret court proceedings for a hearing-impaired individual." Id. § 57.001(1). A "licensed court interpreter" is a spoken-language interpreter who is "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." Id. § 57.001(5). Subchapter B provides for the certification of court interpreters to interpret court proceedings for hearing-impaired individuals by the Texas Commission for the Deaf and Hard of Hearing. See id. §§ 57.021-.025. And subchapter C provides for the Commission of Licensing and Regulation to license spoken-language court interpreters to interpret court proceedings for individuals who do not communicate in English. See id. §§ 57.041-.048. A person who was practicing as a court interpreter prior to chapter 57's effective date may be licensed or certified without examination by submitting to the relevant commission the required fees and proof of the person's experience. See Act of May 28, 2001, 77th Leg., R.S., ch. 1139, § 5, 2001 Tex. Gen. Laws 2537, 2541.

It is an offense under chapter 57 for an uncertified or unlicensed person to hold one's self out as or to act as a certified or licensed court interpreter. See Tex. Gov't Code Ann. §§ 57.026 (Vernon Supp. 2002) ("A person may not advertise, represent to be, or act as a certified court interpreter unless the person holds an appropriate certificate under this subchapter."), 57.049 ("A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under this subchapter."). A person who commits this offense is subject to administrative penalties and to prosecution for a Class A misdemeanor. See id. §§ 57.027(a) ("A person commits [a Class A misdemeanor] offense if the person violates this subchapter or a rule adopted under this subchapter."), (b) ("A person who violates this subchapter or a rule adopted under this subchapter is subject to an administrative penalty assessed by the [Commission for the Deaf and Hard of Hearing]."), 57.050(a) ("A person commits [a Class A misdemeanor offense] if the person violates this subchapter or a rule adopted under this subchapter."), (b) ("A person who violates this subchapter or a rule adopted under this subchapter is subject to an administrative penalty assessed by the [Commission of Licensing and Regulation] as provided by Subchapter F, Chapter 51, Occupations Code.").

Significantly, section 57.002 requires a court to appoint a certified or licensed court interpreter upon the motion of a party or the request of a witness:

(a) A court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

Id. § 57.002(a). In addition, a court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter. Id. § 57.002(b). Under subsection (c) of this provision, smaller counties have more flexibility with regard to the qualifications of spoken-language interpreters (but not with regard to interpreters for the deaf): "In a county with a population of less than 50, 000, a court may appoint a spoken language interpreter who is not a certified or licensed court interpreter and who: (1) is qualified by the court as an expert under the Texas Rules of Evidence; (2) is at least 18 years of age; and (3) is not a party to the proceeding." Id. § 57.002(c).

Although section 57.002 clearly modifies the authority of a court to determine the qualifications of an interpreter, we do not construe section 57.002 to strip a court of its authority to determine whether a party or witness is able to communicate in English and requires an interpreter. Section 57.002(a) provides that "[a] court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness." Id. § 57.002(a) (emphasis added). The word "shall" generally imposes a mandatory duty, see id. § 311.016(c) (Vernon 1998) (Code Construction Act), but we must look at a statute as a whole to determine the nature of that duty. See *D.R. v. J.A.R.*, 894 S.W.2d 91, 95 (Tex. App.-Fort Worth 1995, writ denied) (noting that while the word "shall" is generally construed to be mandatory, "[t]here is no absolute test by which it may be determined whether a statutory provision is mandatory or directory.... In determining whether the Legislature intended the particular provision to be mandatory or merely directory, consideration should be given to the entire act, its nature and object, and the consequences that would follow from each construction."). We construe section 57.002(a) to impose on a court the mandatory duty to appoint a certified or licensed interpreter when the court appoints an interpreter. See Tex. Gov't Code Ann. § 57.002(a) (Vernon Supp. 2002) ("[a] court shall appoint a certified court interpreter or a licensed court interpreter") (emphasis added). However, we believe section 57.002(a)'s conditional clause-"if a motion for the appointment of an interpreter is filed by a party or requested by a witness, " id. § 57.002(a) (emphasis added)-indicates that the legislature intended for courts to have discretion to determine whether the party or witness requires an interpreter. See *D.R.*, 894 S.W.2d at 94-95 (in statute providing that "[i]f the court finds that a motion to modify under Section 14.081 ... is filed frivolously or is designed to harass a party, the court shall tax attorney's fees as costs against the offending party as provided by Section 11.18 of this code, " the word "shall" merely directs the trial court to award the attorney fees as costs under section 11.18 but does not make the awarding of attorney fees mandatory). Furthermore, it would not be reasonable to construe section 57.002 to require a court to grant every motion or request for an interpreter. For example, the

legislature would not have intended to require courts to appoint interpreters when the witness or party clearly does not require one or has requested the appointment of an interpreter in bad faith. See Tex. Gov't Code Ann. § 311.021 (Vernon 1998) (in enacting a statute, it is presumed that "a just and reasonable result is intended" and "a result feasible of execution is intended") (Code Construction Act).

## II. Questions [omitted]

### A. Appointment of Interpreter for Plea in a Misdemeanor Case [omitted]

### B. Appointment of Interpreter in Certain Juvenile Proceedings

You also ask about the appointment of interpreters for parents in proceedings involving juveniles under article 45.0215 and article 45.054 of the Code of Criminal Procedure. Under article 45.0215, a justice of the peace must issue a summons to compel a juvenile defendant's parent, guardian, or managing conservator to be present during the taking of the defendant's plea and other proceedings. See Tex. Code Crim. Proc. Ann. art. 45.0215(a)(2) (Vernon Supp. 2002). If the court is not able to secure the appearance of the defendant's parent, guardian, or managing conservator, "the court may ... take the defendant's plea and proceed against the defendant." Id. art. 45.0215(b). Article 45.054 authorizes a justice court that makes a finding that an individual has failed to attend school under section 25.094 of the Education Code to enter an order that imposes certain conditions on the individual's parents and to require the parents' attendance at a hearing. See id. § 45.054(a)(3) (authorizing order that individual and parent attend class), (b) (providing that order under subsection (a)(3) enforceable by contempt), (c) (authorizing court to summon parent to hearing), (d) (parent who fails to attend hearing after receiving notice commits class C misdemeanor). In light of these two provisions you ask:

If the parent or guardian, who may or may not be a witness but is required to be in attendance and subject to sanctions, cannot speak English must the court appoint a licensed interpreter before proceeding with the respondent juvenile's hearing?

Request Letter, *supra* note 1, at 2 (question 1(c)). Our answer to this question assumes that the parent cannot communicate in English and requires an interpreter.

Again, chapter 57 requires a justice court to appoint "a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court." Tex. Gov't Code Ann. § 57.002(a) (Vernon Supp. 2002). A juvenile proceeding under chapter 45 of the Code of Criminal Procedure constitutes a criminal proceeding within the meaning of chapter 57. See Tex. Att'y Gen. Op. No. JC-0579 (2002) at 2-3.

A court must appoint a licensed interpreter for a parent who is a witness in a proceeding and who requests the appointment of a spoken-language interpreter. See Tex. Gov't Code Ann. § 57.002(a) (Vernon Supp. 2002). A court also must appoint a licensed interpreter for a parent under chapter 57 if the parent is a party to the proceeding and he or she files a motion for the appointment of a spoken-language interpreter. See *id.* Unless the court has specifically named the parent as a party, a parent does not appear to be a party to the proceedings about which you ask. Chapter 57 does not define the term "party." The term "party" is a technical legal term that refers to "[o]ne by or against whom a lawsuit is brought." Black's Law Dictionary 1144 (7th ed. 1999); see also Tex. Gov't Code Ann. § 311.011(b) (Vernon 1998) ("Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."). This office construed the term "party" in section 21.002 of the Civil Practice and Remedies Code, which requires the appointment of an interpreter in a civil case for a party who is deaf, to include only a person who has been named as a party by the court or who is deemed a party by statute. See Tex. Att'y Gen. Op. No. DM-411 (1996) at 9 (concluding that "[a] custodial relative not included within [Family Code] section 51.02(10)'s list of parties who is not a witness to the proceedings is not entitled as a matter of law to the services of an interpreter" under section 21.002 of the Civil Practice and Remedies Code).

Unlike the Family Code's juvenile justice provisions, which expressly define the term "party" to include a juvenile's parent, see Tex. Fam. Code Ann. § 51.02(10) (Vernon 2002), chapter 45 of the Code of Criminal Procedure does not define the term. And neither of the two provisions you ask about names a juvenile's parent as a party to the proceeding. However, while article 45.0215 merely requires that a court summon a parent to attend a proceeding involving his or her child, article 45.054 authorizes a court to impose conditions and sanctions against a parent. If a court contemplates imposing conditions or sanctions against a parent, then we believe the court should treat the parent as a witness or a party. As noted above, spoken-language interpreters appointed for parties or witnesses under article 38.30 of the Code of Criminal Procedure are paid with county funds. See Tex. Code Crim. Proc. Ann. art. 38.30(b) (Vernon Supp. 2002); see also *id.* art. 38.30(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 him.").

### C. Appointment of Interpreter When there is No Person Licensed to Interpret in a Particular Language [omitted]

D. What Constitutes a Motion or Request for an Interpreter in a Civil Proceeding [omitted]

E. Appointment of Interpreter Requested by Parties in a Civil Case [omitted]

F. Payment of Interpreters [omitted]

## SUMMARY

Chapter 57 of the Government Code applies to a plea in a misdemeanor case in justice court. A court clerk who merely converses with a defendant in a language other than English does not "act as a licensed court interpreter" within the meaning of chapter 57. In either a civil or criminal proceeding, whether a party has filed a motion for or a witness has requested the appointment of an interpreter will depend upon the facts and is a question for the trial court in the first instance. The court may grant or deny such a motion or request. In a criminal proceeding, a court must also take into account the defendant's constitutional right to an interpreter and article 38.30 of the Code of Criminal Procedure. Chapter 57 establishes qualifications for spoken-language interpreters appointed in criminal cases under the authority of article 38.30.

If the only person who is licensed to interpret in a particular language resides in a distant location, a court in a populous county would be required to appoint that person. On the other hand, if there is no interpreter licensed to interpret in a particular language, the appointment of an unlicensed person may be within a court's inherent power.

Chapter 57 does not alter preexisting law on the payment of appointed court interpreters. It does not require counties to pay for spoken-language interpreters in civil cases. Courts retain their authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter's compensation and to direct how an interpreter will be paid in civil cases. A county may not require a court to select an interpreter from an interpreter service under contract with the county, although a court may choose to do so.

Yours very truly,

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