

CHAPTER 57. EVIDENCE AND WITNESSES.
ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

(a) In any court proceeding wherein a party or witness or juror cannot readily understand or verbally communicate the English language because the witness or juror is deaf or a deaf mute or because of any other hearing impairment, such person shall have the right to have a qualified interpreter to assist the witness or juror at every stage of the proceeding. Such right shall also pertain in any proceeding before administrative boards, commissions or agencies of this state or any political subdivision or municipality thereof, and in coroners' inquests and grand jury proceedings.

(b) The director of the administrative office of the supreme court of appeals shall establish a program to facilitate the use of interpreters in courts of this state and in extra-judicial criminal proceedings as provided for in this section.

(1) The director shall prescribe, determine and certify the qualifications of persons who may serve as certified interpreters in courts of this state in proceedings involving the hearing impaired. Persons certified by the director shall be interpreters certified by the national registry of interpreters for the deaf, or the West Virginia registry of interpreters for the deaf or approved by the chief of services for the deaf and hearing impaired of West Virginia of the West Virginia division of vocational rehabilitation, or shall be such other persons deemed by the director to be qualified by education, training and experience. The director shall maintain a current master list of all interpreters certified by the director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters.

(2) Each circuit court shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as oral or manual interpreters for the hearing impaired by the director of the administrative office of the supreme court of appeals in accordance with the certification program established pursuant to this section.

(3) In any criminal or juvenile proceeding, or other proceeding described in section five, article eleven, chapter fifty-one of this code, the judge of the circuit court in which such proceeding is pending, or, if such proceeding is in a magistrate court, then the judge of the circuit court to which such proceeding may be appealed or presented for judicial review, shall, with the assistance of the director of the administrative office of the supreme court of appeals, utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the judge, the services of an otherwise competent interpreter, if the judge determines on his own motion or on the motion of a party that such party or a witness who may present testimony in the proceeding suffers from a hearing impairment so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony. The utilization of an interpreter shall be appropriate at any stage of the proceeding, judicial or extra-judicial, at which a person would be entitled to representation by an attorney and a waiver of the right to counsel shall not constitute a waiver of the right to an interpreter as provided for by this section.

(c) Whenever a qualified interpreter is appointed pursuant to the provisions of subsection (b) of this section, or to accommodate a juror, the court shall, at the conclusion of the proceedings or interrogation, by order, fix the compensation of such

interpreter. The compensation shall include reimbursement for all reasonable and necessary expenses actually incurred in the performance of such duties, but expenses shall not be incurred in excess of the prevailing rate for state employees. In all such appointments arising from subdivision (3), subsection (b) of this section, the compensation shall be paid by the state auditor from the fund administered by the supreme court of appeals for other court costs. In other proceedings before any circuit or magistrate court, supreme court of appeals or before any administrative boards, commissions and agencies, the compensation shall be fixed by such court, board, commission or agency and paid, within the limit of available funds, by such court, board, commission or agency.

(d) In any proceeding described in subdivision (3), subsection (b) of this section, if the circuit judge does not appoint an interpreter, an individual requiring the services of an interpreter may seek the assistance of the clerk of the circuit court or the director of the administrative office of the supreme court of appeals in obtaining the assistance of a certified interpreter.

(e) Whenever an interpreter is necessary in any court proceeding because a witness or party speaks only a foreign language or for any other reason, an interpreter shall be sworn truly to interpret.

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-1. Legislative findings.

The Legislature hereby finds and declares that:

(a) There is a need for West Virginia to adequately identify the hearing-impaired population and provide efficient and effective services to such population;

(b) Hearing-impaired people need to be more involved in the decisions and programs that affect their lives by soliciting and seriously considering their collective opinion on appropriate matters;

(c) Cooperation among state and local agencies must be facilitated in an effort to ensure that adequate and appropriate services are available and provided;

(d) In order to further the aforementioned goals it is necessary to determine what services exist and what services can be developed in order to match services to individual needs;

(e) A rubella epidemic from one thousand nine hundred sixty-three to one thousand nine hundred sixty-five caused a number of infants in West Virginia to be born hearing-impaired. These individuals are approaching the ages where they will no longer be eligible for educational services, thus requiring services as young adults. The Legislature, therefore, declares that there is an unprecedented and imperative need to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum of services to this particular population;

(f) There must be more emphasis on the use of interpreters for deaf and hard-of-hearing people and on the quality control of such services;

(g) There must be more emphasis on the use of telecommunication devices for the deaf (tdds) and means to provide them for hearing-impaired people;

(h) Through the implementation of the provisions of this article, the deaf and hard-of-hearing population of West Virginia will be aided in their efforts to live independent and productive lives.

§5-14-2. Definitions.

As used in this article:

(a) "Deaf" means severe to profound impairment of the sense of hearing whereby the understanding of speech is unattainable through the ear alone with or without amplification, and visual communication is used as the primary mode of communication.

(b) "Hard of hearing" means significant impairment to the sense of hearing, but not to the extent that the person must rely primarily on visual communication.

(c) "Hearing-impaired" means persons who are either deaf or hard of hearing.

§5-14-3. Continuation of commission; membership.

(a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the Department of Health and Human Resources consisting of seventeen persons, eight of whom shall serve ex officio. The remaining members are appointed by the Governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission's expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.

(b) The members are: The Secretary of the Department of Health and Human Resources, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the Commissioner of the Bureau for Public Health, or his or her designee; the State Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her designee; the Commissioner of the Division of Human Services, or his or her designee; the Chairman of the Advisory Council for the Education of Exceptional Children, or his or her designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve ex officio with full voting privileges.

(c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the hearing-impaired, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the Board of the West Virginia Association of the Deaf.

§5-14-4. Terms of office; quorum.

Members of the commission who do not serve ex officio shall be appointed for the following terms: Three members shall be appointed for a term of three years; three for a term of two years; and three for a term of one year. When a vacancy occurs, an appointment shall be made for the unexpired term. The members shall annually elect a chairman. A majority of the members constitutes a quorum for the transaction of business.

§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

(a) The commission shall maintain a clearinghouse of information, the purpose of which is to aid hearing-impaired persons and others in obtaining appropriate services or information about such services, including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

(b) The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language.

(c) The Secretary of the Department of Health and Human Resources shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code for the state quality assurance evaluation, including the establishment of required qualifications and ethical standards for interpreters, the approval of interpreters, the monitoring and investigation of interpreters and the suspension and revocation of approvals. The commission may conduct interpreter evaluations and collect and expend funds with regard thereto.

(d) The commission shall develop an outreach program to familiarize the public with the rights and needs of hearing-impaired people and of available services.

(e) The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multihandicapped hearing-impaired.

§5-14-6. Seminars and training sessions.

The commission may establish one or more training sessions or workshops for the teaching of interpretive skills, in-service training and counseling for the deaf and hard of hearing. Seminars and training sessions may be conducted and are encouraged to work with the existing facilities and organizations established to accomplish the same goals.

§5-14-7. Assistance of other agencies.

To effectuate the purposes of this article, the commission may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide such assistance, services and data as will enable the commission to properly carry out its powers and duties hereunder.

§5-14-8. Executive director; staff.

There shall be within the commission an executive director who shall be appointed by the commission and whose compensation shall be fixed by the commission within the budgetary appropriation thereof. The executive director shall be in the exempt class of civil service and may not be a member of the commission. The executive director may attend all meetings of the commission, as well as its committees, but has no vote on decisions or actions of the commission or its committees. The executive director shall

carry out the decisions and actions of the commission, hire all staff, administer all affairs of the commission in accordance with its policies and discharge such other duties as the commission shall from time to time determine. The commission may employ such other officers, employees and clerical assistants as it considers necessary and may fix their compensation within the amounts made available by appropriation. To the extent possible, the executive director shall be hearing-impaired and shall be proficient in communicating with hearing-impaired individuals using varying communication modes.

§5-14-9. Reports and recommendations.

The commission shall make an annual report to the governor and the Legislature which shall include its recommendations and programs.

§5-14-10. Grants and gifts; contracts.

The commission, with the approval of the governor, may agree to accept and contract as agent of the state any gift, grant, devise or bequest, including federal grants, for any of the purposes of this article. Any moneys so received may be expended by the commission to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

The commission may enter into contracts with any person, firm, corporation, municipality or governmental agency to effectuate the purposes of this article.

§5-14-11. Reimbursement for expenses.

The members of the commission, other than its ex officio members, are entitled to reimbursement for their actual and necessary expenses incurred in the performance of official duties.

§5-14-12. West Virginia Commission for the Deaf and Hard of Hearing continued.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Commission for the Deaf and Hard of Hearing shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.