

# LEGAL ACTION OF WISCONSIN

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October 2, 2024

Clerk of Supreme Court  
Attention: Deputy Clerk-Rules  
P.O. Box 1688  
Madison, WI 53701-1688

**RECEIVED**

OCT 07 2024

Re: **Legal Action of Wisconsin Support for Rules Petition 24-02  
Interpreters in Municipal Court Proceedings**

**CLERK OF SUPREME COURT  
OF WISCONSIN**

Honorable Justices,

Thank you for considering Legal Action of Wisconsin's comments in support of Rules Petition 24-02. Because it is critical for municipal court parties to understand and be understood at municipal court hearings, LAW supports the proposed rule establishing a right to an interpreter for individuals with limited English proficiency ("LEP").

Legal Action of Wisconsin ("LAW") is a non-profit civil legal aid firm that provides free legal representation to low-income residents in the Southern half of Wisconsin. LAW specializes in issues that impact our client population, with five main practice areas: housing, family, consumer, public benefits, and barriers to employment. As part of our work removing barriers to family-sustaining employment, LAW advocates appear in municipal courts and advise clients who have cases in municipal courts.

Despite handling a large volume of cases, municipal courts are an often-overlooked component of Wisconsin's legal punishment systems. In 2023, Wisconsin Circuit Courts disposed of 103,683 criminal cases, while municipal courts disposed of 425,112 civil citation cases.<sup>i</sup> Though citation cases in municipal courts are rightly regarded as being less serious than criminal cases, they can still have significantly negative impacts on the lives of defendants. For example, municipal court convictions are grounds for lawful employment discrimination under certain circumstances.<sup>ii</sup> And though municipal courts can generally only sentence defendants to pay forfeitures, those forfeitures represent a significant hardship for LAW's clients and their families—people who are experiencing poverty.<sup>iii</sup> Additionally, in Wisconsin, defendants who do not timely pay forfeitures are subject to remedial sanctions for non-payment, like driver's license suspensions and warrants/incarceration.<sup>iv</sup> Using driver's license suspensions and warrants as debt collection tools leads to increased police contact and even more court debt for low-income municipal court defendants, compounding harms for defendants and their families while also increasing burdens on the legal system.<sup>v</sup>

If LEP parties understand they will not have access to an interpreter, they may anticipate that they will not receive fair treatment and/or may be too intimidated to appear, leading to default judgment. If they do appear in municipal court, there is currently no rule requiring an interpreter under most circumstances. Therefore, many LEP individuals are forced to rely on family, friends, computers, or even strangers to help them understand legal proceedings that affect liberty and property interests.

If LEP individuals do appear in municipal court, being forced to use a child as an interpreter is especially troubling. The practice of “language brokering,” where parents rely on children to translate within systems that fail to provide language access, is inappropriate in the context of the legal punishment system.<sup>vi</sup> Language brokering is associated with emotional, ethical, and legal concerns for the child who attempts to interpret confusing or fraught situations where their parent may be punished.<sup>vii</sup> The emotional effect on the “interpreter” can compromise the accuracy of the legal communication, which can create misunderstandings that can negatively impact a LEP defendant’s case, also creating a greater burden for the court.

On the other hand, municipal courts sometimes solicit strangers to act as interpreters, which raises other concerns. When a LEP defendant appears without an interpreter, LAW attorneys have observed some municipal courts crowdsource “interpreters” from the gallery. In addition to creating little confidence that the defendant received an accurate translation, this raises questions of impartiality. If a defendant in a different case agrees to “interpret” for an LEP defendant’s case, will they receive favor from the court in their own?

Federal law prohibits national origin discrimination by entities who receive federal assistance.<sup>viii</sup> The U.S. Supreme Court has held that denying meaningful access to people with LEP constitutes race and national origin discrimination under Title VI.<sup>ix</sup> Federal law prohibits discrimination by entities who receive federal assistance, defining receipt of federal assistance broadly.<sup>x</sup> Even if municipal courts receive no direct or indirect federal assistance, they should ensure that they are not engaging in race, national origin, or disability discrimination. Providing competent, neutral interpreters in municipal court hearings is one aspect of achieving that goal.<sup>xi</sup>

In 2021, more than 3% of Wisconsin’s population- about 174,000 people- qualified as individuals with LEP.<sup>xii</sup> Rules Petition 24-02 represents a modest investment in equal access to justice. Providing court interpreters will help ensure sure that defendants and witnesses in municipal court proceedings understand what is happening and can meaningfully participate in the legal process.

Thank you again for your consideration.

Sincerely,



Monica Cail  
Director of Racial Justice Litigation & Advocacy



Susan Lund  
Supervising Attorney

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<sup>i</sup> Wisconsin Court System *Circuit Court Caseload Summary for 2023*, available at <https://www.wicourts.gov/publications/statistics/circuit/docs/caseloadstate23.pdf>  
Wisconsin Court System, *Statewide Municipal Court Statistics for 2023*, available at <https://www.wicourts.gov/publications/statistics/municipal/docs/caseload23.pdf>

<sup>ii</sup> Wis. Stat. § 111.335(3)



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<sup>iii</sup> See *Debt Sentence: How Fines And Fees Hurt Working Families: Ability to Pay, Collateral Consequences, Courts as Revenue Centers, Racial Disparities, Traffic Fines and Fees*, May 24, 2023, available at <https://finesandfeesjusticecenter.org/articles/debt-sentence-how-fines-and-fees-hurt-working-families/> (“A recent survey showed that 98.5% of respondents who had court debt said it impacted their daily lives and more than half reported that it compromised at least one of their essential needs: housing, food security, employment, childcare, health, and transportation.”); see also *Court-Issued Fines And Fees Frequently Undermine Health Equity*, February 2, 2022, available at <https://www.healthaffairs.org/doi/10.1377/forefront.20220131.841361/> (“those who are unable to pay their court-imposed fines and fees face a range of collateral consequences that can lead to further harm, including job loss, homelessness, and family separation, not to mention health problems. One systematic review of 33 peer-reviewed studies found that indebtedness was associated with suicidal ideation, depression, and worse views of one’s own health. In particular, the stress of attending a hearing, often without legal representation, can exacerbate mental and physical health conditions.”); see also *Monetary Sanctions and Symbiotic Harms*, January 2022, <https://www.rsjournal.org/content/8/2/98> (describing the detrimental effects of financial punishment on family, known as symbiotic harms).

<sup>iv</sup> Wis. Stat. § 800.095

<sup>v</sup> See State Bar of Wisconsin Policy Position:

<https://www.wisbar.org/aboutus/governmentrelations/Documents/BOGPolicyPositions2023.pdf> (“Recognizing the unjust, compounding harms created by these debt collection mechanisms, Wisconsin must stop using driver’s license suspensions, warrants, or incarceration to collect debt for tickets, forfeitures, court costs, or criminal fines.”); see also *Eliminating Wisconsin’s Driver’s License Suspension Policy for Failure to Pay Forfeitures: A Cost-Benefit Analysis*, April 10, 2024, available at <https://lafollette.wisc.edu/research/eliminating-wisconsins-drivers-license-suspension-policy-for-failure-to-pay-forfeitures-a-cost-benefit-analysis/> (“Adults who do not pay their traffic-related forfeitures may have their licenses suspended for up to one year. While this policy is meant to deter nonpayment and promote compliance with state law, it disproportionately affects drivers with low-incomes and contributes to a cycle of financial and employment difficulties. This analysis finds that eliminating this policy and instead using a debt collection program through the Department of Revenue would result in an estimated \$200.6 million in annual net benefits for Wisconsin residents.”).

<sup>vi</sup> *Language Brokering in Linguistic Minority Communities: The Case of Chinese- and Vietnamese-American Students*. *Bilingual Research Journal*, 20(3–4), 485–498 (1996), available at <https://doi.org/10.1080/15235882.1996.10668640>

<sup>vii</sup> “*It Shouldn’t Rest on Me: Providing Meaningful Language Access and Avoiding the Use of Children as Interpreters – Resources for Law Enforcement*, available at [https://api-gbv.org/wp-content/uploads/2021/04/LanguageAccessforLE\\_2020-Children-as-Interpreters.pdf](https://api-gbv.org/wp-content/uploads/2021/04/LanguageAccessforLE_2020-Children-as-Interpreters.pdf)

<sup>viii</sup> Title VI, 42 U.S.C. § 2000d *et seq.* was enacted as part of the landmark Civil Rights Act of 1964.

<sup>ix</sup> See *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786 (1974)

<sup>x</sup> Title VI’s protections include prohibiting discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance, which is defined broadly and covers both primary recipients and subrecipients. See *U.S. D.O.J. Title VI Legal Manual (Updated)*, available at <https://www.justice.gov/crt/fcs/T6manual5> (“the direct recipient as well as the secondary or subrecipient are considered to have received federal funds. In other instances, the funding may be directed to the funding beneficiaries but another entity ultimately receives the funding. For example, a college or university receives federal financial assistance indirectly where it enrolls United States military veterans for whom the federal government provides tuition payments. Although federal payments go directly to the veterans and indirectly to the university, the university is receiving federal financial assistance that neither it nor the students would have received but for students’ enrollment and entitlement.”)

<sup>xi</sup> According to U.S. D.O.J., “[m]eaningful access” requires competent interpretation, *i.e.*, more than interpretation done by a person who may self-identify as bilingual; it requires proficiency in both languages, including proficiency in any specialized or technical terms or concepts. 67 Fed. Reg. at 41461.

<sup>xii</sup> See Wisconsin Director of State Courts, *Language Access Plan* (Dec. 2021) at 5, available at <https://www.wicourts.gov/services/interpreter/docs/laplan.pdf>