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JUDICIARY LAW  
ARTICLE 12. INTERPRETERS

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*NY CLS Jud § 390 (2008)*

§ 390. Appointment of interpreter for deaf person

Whenever any deaf person is a party to a legal proceeding of any nature, or a witness therein, the court in all instances shall appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority as approved by the chief administrator of the courts to interpret the proceeding to, and the testimony of, such deaf person; provided, however, where compliance with this section would cause unreasonable delay in court proceedings, the court shall be authorized to temporarily appoint an interpreter who is otherwise qualified to interpret the proceedings to, and the testimony of, such deaf person until a certified interpreter is available. In any criminal action in a state-funded court, the court shall also appoint such an interpreter to interpret the proceedings to a deaf person who is the victim of the crime or may appoint such interpreter for the deaf members of the immediate family (parent or spouse) of a victim of the crime when specifically requested to do so by such victim or family member. The fee for all such interpreting services shall be a charge upon the state at rates of compensation established by rule of the chief administrator; except that where such interpreting services are rendered in a justice court, the fee therefor shall be paid as provided by law in effect on July first, nineteen hundred ninety-one.

**HISTORY:** Add, L 1972, ch 593, § 1; amd, L 1991, ch 284, § 1, L 1991, ch 703, § 1 (repealed, L 1992, ch 478, § 1), L 1992, ch 478, § 2, eff July 17, 1992, deemed eff July 15, 1991.

Former § 390, add, L 1921, ch 639; amd, L 1941, ch 290, § 13; renumbered § 383, L 1945, ch 649, § 197.

**NOTES:**

Research References & Practice Aids:

34 NY Jur 2d, Criminal Law § 2319  
105 NY Jur 2d, Trial § 322

Matthew Bender's New York Civil Practice:

6 Cox, Arenson, Medina, New York Civil Practice: SCPA P 2611.03

## Annotations:

Right of accused to have evidence or court proceedings interpreted. 36 ALR3d 276

Right of accused to have evidence or court proceedings interpreted, because accused or other participant in proceeding is not proficient in the language used. 32 ALR5th 149

## Case Notes:

Determination of whether particular interpreter for deaf person is "qualified" lies within sound discretion of trial court. *People v Catron* (1988, 3d Dept) 143 App Div 2d 468, 532 NYS2d 589, app den (1988) 73 NY2d 853, 537 NYS2d 500, 534 NE2d 338.

County Court did not abuse its discretion in finding that grand jury interpreter for deaf complainant was qualified, even though she lacked certification with particular national registry of interpreters, since she was as capable as interpreter employed at trial, whom defendant found unobjectionable. *People v Catron* (1988, 3d Dept) 143 App Div 2d 468, 532 NYS2d 589, app den (1988) 73 NY2d 853, 537 NYS2d 500, 534 NE2d 338.

Hearing-impaired defendant did not need assistance of sign interpreter in order to waive his Miranda rights where expert testimony revealed that, although he could communicate more effectively by sign language, he was able to understand written English at Regents proficiency level, he indicated that he was comfortable communicating by written questions and answers, and his father (who accompanied him to police station) stated that he could effectively communicate in that manner. *People v Gaylord* (1994, 4th Dept) 210 App Div 2d 980, 621 NYS2d 247, 8 ADD 229, app den (1995) 84 NY2d 1031, 623 NYS2d 187, 647 NE2d 459.

Court's inquiry as to credentials of defendant's sign interpreter was sufficient where interpreter identified herself as "certified sign interpreter," was sworn to act as sign interpreter during every court appearance in case, and served in that capacity without objection; under different circumstances, more detailed inquiry whether interpreter satisfied credential requirements of CLS Jud § 390 might be required. *People v Harley* (1995, 4th Dept) 219 App Div 2d 850, 632 NYS2d 39.

Defendant had no obvious hearing impairment necessitating provision by court, sua sponte, of any type of assistance, where he did not indicate to court that he required interpretive assistance, he responded cogently to court's inquiries on all matters, and although defense counsel mentioned that defendant was deaf in one ear, court resolved matter to defendant's satisfaction by adjusting courtroom seating arrangements. *People v Phillips* (1999, 1st Dept) 265 App Div 2d 237, 697 NYS2d 13, app den (2000) 94 NY2d 906, 707 NYS2d 390, 728 NE2d 989 and habeas corpus dismissed (2001, SD NY) 2001 US Dist LEXIS 19793.

The prior felony conviction of a hearing-impaired defendant obtained in the absence of a qualified sign-language interpreter may not constitutionally be used for the purposes of adjudication as a second felony offender under CPL § 400.21(7), since the absence of a qualified sign-language interpreter appointed under *Jud Law* § 390 renders such a trial unfair, and a conviction obtained in violation of the defendant's constitutional rights may not be considered as a predicate felony. Accordingly, where the failure of the hearing-impaired defendant to appeal either of his two prior convictions on the basis of inadequate interpretation cannot be deemed a waiver of the right to now raise the constitutional issue of the absence of an interpreter, and he has met his burden of proving by substantial evidence that both of his prior convictions were obtained in violation of his constitutional rights, he may only be sentenced as a first felony offender. *People v Rivera* (1984, Sup) 125 Misc 2d 516, 480 NYS2d 426.

Although there is no formal rule or regulation for determining qualifications of sign language interpreter, fair and equitable procedure would be that all sign language interpreters for court proceedings be either certified by Registry of Interpreters or have passed minimum competency screening required by State Office of Vocational Rehabilitation.

*People v Rodriguez (1989, Sup) 145 Misc 2d 105, 546 NYS2d 769.*

Section 390 of the Judiciary Law applies only to proceedings in the courts, and not to arbitration or administrative hearings of any nature, including administrative adjudication of traffic infractions. No opinion expressed as to what rights, if any, are to be accorded deaf persons before administrative tribunals under the due process clauses of the State and Federal constitutions. 1974 Ops Atty Gen June 14 (informal).