

## Auxiliary Services for Colorado State Courts Statute

### [Appointment of Interpreters for Persons who are Deaf or Hard of Hearing](#)

**Editor's note:** This part 2 was numbered as article 3 of chapter 16, C.R.S. 1963. The substantive provisions of this part 2 were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

### [13-90-201. Legislative declaration.](#)

The general assembly hereby finds and declares that it is the policy of this state to secure the rights of persons who are deaf or hard of hearing and cannot readily hear or understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings of the courts or any board, commission, agency, or licensing or law enforcement authority of the state unless qualified interpreters or auxiliary services are available to assist them.

**Source:** **L. 87:** Entire part R&RE, p. 570, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1086, § 1, effective May 25. **L. 2009:** Entire section amended, (SB [09-144](#)), ch. 219, p. 992, § 8, effective August 5.

**Editor's note:** This section was contained in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

### [13-90-202. Definitions.](#)

As used in this part 2, unless the context otherwise requires:

- (1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, agency, or licensing or law enforcement authority of the state.
- (2) "Assistive listening device" means an amplification system that operates in conjunction with a hearing aid to increase the volume of sounds for the hearing aid only.
- (3) "Auxiliary services" means those aids and services that assist in effective communication with a person who is deaf or hard of hearing, including but not limited to:
  - (a) The provision of a computer-aided realtime translations (CART) reporter;
  - (b) The provision of an assistive listening device; or
  - (c) The acquisition or modification of equipment or devices to assist in effective communication with a person who is deaf or hard of hearing.

(4) "Commission" means the Colorado commission for the deaf and hard of hearing in the department of human services created in section [26-21-104](#), C.R.S.

(5) "Computer-aided realtime translation (CART) reporter" means a word-for-word speech-to-text translation service for people who are deaf or hard of hearing.

(6) "Deaf or hard of hearing" means a person who has a functional hearing loss of sufficient severity to prevent aural comprehension, even with the assistance of hearing aids.

(7) "Effective communication" means those methods of communication that are individualized and culturally appropriate to a person who is deaf or hard of hearing so that he or she can easily understand all auditory information.

(8) "Qualified interpreter" means a person who has a valid certification of competency accepted by the commission and includes, but is not limited to, oral interpreters, sign language interpreters, and intermediary interpreters.

(9) "State court system" means the system of courts, or any part thereof, established pursuant to articles 1 to 9 of this title and article VI of the state constitution. "State court system" shall not include the municipal courts or any part thereof.

**Source:** **L. 87:** Entire part R&RE, p. 570, § 1, effective April 23. **L. 94:** (4) amended, p. 2642, § 93, effective July 1. **L. 2006:** Entire section amended, p. 1086, § 2, effective May 25. **L. 2009:** (1) amended and (9) added, (SB [09-144](#)), ch. 219, p. 992, § 9, effective August 5.

**Editor's note:** Subsections (1) and (9) were contained in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

### **[13-90-203. Powers and duties of the department of human services.](#)**

The department of human services shall promulgate rules pursuant to article [4](#) of title [24](#), C.R.S., which have been proposed by the commission as necessary for the implementation of this part 2. The rule-making process shall be open and available for input from the public, including but not limited to interpreters and consumers of interpreter services.

Source: L. 87: Entire part R&RE, p. 571, § 1, effective April 23. L. 94: Entire section amended, p. 2642, § 94, effective July 1. L. 2006: Entire section amended, p. 1087, § 3, effective May 25.

**Source:** **L. 87:** Entire part R&RE, p. 571, § 1, effective April 23. **L. 94:** Entire section amended, p. 2642, § 94, effective July 1. **L. 2006:** Entire section amended, p. 1087, § 3, effective May 25.

**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

**13-90-204. Appointment of auxiliary services - when.**

(1) A qualified interpreter or auxiliary service shall be provided by an appointing authority to interpret the proceedings to a person who is deaf or hard of hearing and to interpret the statements of the person who is deaf or hard of hearing in the following instances:

(a) When a person who is deaf or hard of hearing is present and participating as the principal party of interest or a witness at any civil or criminal proceeding, including but not limited to any criminal or civil court proceeding in the state court system; a court-ordered or court-provided alternative dispute resolution, mediation, arbitration, or treatment; an administrative, commission, or agency hearing; or a hearing of a licensing authority of the state;

(b) When a person who is deaf or hard of hearing is involved in any stage of grand jury or jury proceedings as a potential or selected juror;

(c) When a juvenile whose parent or parents are deaf or hard of hearing is brought before a court for any reason;

(d) When a person who is deaf or hard of hearing is arrested and taken into custody for an alleged violation of a criminal law of the state or any of its political subdivisions. Such appointment shall be made prior to any attempt to notify the arrestee of his or her constitutional rights and prior to any attempt to interrogate or to take a statement from such person; except that a person who is deaf or hard of hearing and who is otherwise eligible for release shall not be held pending the arrival of a qualified interpreter.

(e) (Deleted by amendment, L. 2006, p. 1088, §4, effective May 25, 2006.)

(f) When effective communication cannot be established without an auxiliary service and when an alleged victim or witness is a person who is deaf or hard of hearing, who uses sign language for effective communication, and who is questioned or otherwise interviewed by a person having a law enforcement or prosecutorial function in any criminal investigation, except where the length, importance, or complexity of the communication does not warrant provision of an auxiliary service. Assessment of whether the length, importance, or complexity of the communication warrants provision of an auxiliary service shall be made in accordance with United States department of justice regulations effectuating Title II of the federal "Americans with Disabilities Act of 1990", as from time to time may be amended, Pub.L. 101-336, codified at 42 U.S.C. sec. 12101, et seq., including regulations, analysis, and technical assistance.

(g) (Deleted by amendment, L. 2007, p. 2026, § 29, effective June 1, 2007).

(1.5) Nothing in this part 2 shall be construed to provide less than is required by Title II of the federal "Americans with Disabilities Act of 1990", as from time to time may be amended, Pub.L. 101-336, codified at 42 U.S.C. sec. 12101 et seq., and its implementing regulations.

(2) Nothing contained in this section shall be construed to preclude the use of services of an interpreter in civil proceedings.

**Source:** L. 87: Entire part R&RE, p. 571, § 1, effective April 23. L. 2006: (1) amended, p. 1088, § 4, effective May 25. L. 2007: (1)(f) and (1)(g) amended and (1.5) added, p. 2026, § 29, effective June 1. L. 2009: (1)(a) amended, (SB [09-144](#)), ch. 219, p. 992, § 10, effective August 5.

## ANNOTATION

**Editor's note:** (1) This section was contained in a part that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 13-90-201 as said section existed in 1986, the year prior to the repeal and reenactment of this part.

(2) Subsection (1)(a) was contained in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

**Am. Jur.2d.** See 81 Am. Jur.2d, Witnesses, §§ 269, 693, 815

**Annotator's note.** Since § [13-90-204](#) is similar to § 13-91-201 as it existed prior to the 1987 repeal and reenactment of this part 2, a relevant case construing that provision has been included in the annotations to this section.

**Effect of violation of statute.** Assuming that accuracy is the central purpose of the statute, if a qualified interpreter who was not appointed by a court was translating, the failure to appoint an interpreter should not result in suppression; but if the interpreter was not able to accurately communicate with the defendant, the defendant's statements must be suppressed. *People v. Harper*, 726 P.2d 1129 (Colo. 1986).

**Definition of arrest.** Whether a person is in custody turns on an objective assessment of whether a reasonable person in the defendant's circumstances would have believed that he was free to leave the officer's presence, not on the officer's subjective state of mind. *People v. Harper*, 726 P.2d 1129 (Colo. 1986).

**Only one interpreter required** by statute, and defendant's assertion that second interpreter was necessary to assist communications between the defendant and his counsel because appointed interpreter was occupied with interpreting ongoing proceedings was without merit. *People v. Hammons*, 771 P.2d 1 (Colo. App. 1988), cert. denied, 785 P.2d 611 (Colo. 1990).

### **[13-90-205. Coordination of interpreter and auxiliary services requests.](#)**

(1) The commission, in collaboration with the judicial department, shall establish, monitor, coordinate, and publish a list of available resources regarding communication accessibility for persons who are deaf or hard of hearing, including but not limited to qualified interpreters and auxiliary services, for use by an appointing authority pursuant to section [13-90-204](#). Such list shall contain, but not be limited to, the names of private community programs and agencies that secure qualified interpreters and auxiliary services for assignment.

(2) Whenever a qualified interpreter or auxiliary service is required pursuant to section [13-90-204](#), the appointing authority shall secure such interpreter or auxiliary service through the list of available resources made available and coordinated by the commission.

Source: L. 87: Entire part R&RE, p. 571, § 1, effective April 23. L. 94: (1) amended, p. 2642, § 95, effective July 1. L. 2006: Entire section amended, p. 1089, § 5, effective May 25.

**Source: L. 87:** Entire part R&RE, p. 571, § 1, effective April 23. **L. 94:** (1) amended, p. 2642, § 95, effective July 1. **L. 2006:** Entire section amended, p. 1089, § 5, effective May 25.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

**13-90-206. Use of an intermediary interpreter.**

If the qualified interpreter makes a determination that he or she is unable to render a satisfactory interpretation without the aid of an intermediary interpreter, the appointing authority may appoint an intermediary interpreter to assist the qualified interpreter.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1089, § 6, effective May 25.

**13-90-207. Requirements to be met prior to commencing proceedings.**

(1) Prior to commencing any proceedings pursuant to section [13-90-204](#) requiring a qualified interpreter or auxiliary service, the following conditions shall be met:

(a) A qualified interpreter shall take an oath that he or she shall make a true interpretation in an understandable manner to the best of his or her skills, but such oath shall only be required if the entity presiding over the proceeding has been given, by statute, the authority to administer such an oath.

(b) The qualified interpreter or auxiliary service shall be in full view and spatially situated to assure effective communication with the person or persons who are deaf or hard of hearing.

(c) The appointing authority shall make a reasonable attempt to provide a qualified interpreter or auxiliary service that is effective to the person who is deaf or hard of hearing.

Source: L. 87: Entire part R&RE, p. 572, § 1, effective April 23. L. 2006: (1) amended, p. 1089, § 7, effective May 25.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** (1) amended, p. 1089, § 7, effective May 25.

**Editor's note:** This section was contained in a part that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 13-90-203 as said section existed in 1986, the year prior to the repeal and reenactment of this part.

**13-90-208. Waiver.**

The right of a person who is deaf or hard of hearing to a qualified interpreter or auxiliary service may not be waived except in writing by the person who is deaf or hard of hearing. Prior to executing such a waiver, a person who is deaf or hard of hearing may have access to counsel for advice and shall have actual, full knowledge of the right to effective communication. Such waiver is subject to the approval of counsel, if any, to the person who is deaf or hard of hearing and is also subject to the approval of the appointing authority. In no event is the failure of the person who is deaf or hard of hearing to request a qualified interpreter or auxiliary service deemed a waiver of this right.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1090, § 8, effective May 25.

**13-90-209. Privileged communications.**

If a qualified interpreter is called upon to interpret privileged communications pursuant to section [13-90-107](#), the interpreter shall not testify without the written consent of the person who holds the privilege.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23.

**13-90-210. Compensation.**

Subject to the appropriations available to the commission, a qualified interpreter or computer-aided realtime translation reporter provided pursuant to section [13-90-204](#) shall be entitled to compensation for his or her services, including waiting time and necessary travel and subsistence expenses. The amount of compensation shall be based on a fee schedule for qualified interpreters and auxiliary services established by the commission.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1090, § 9, effective May 25.