

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.



CONSIDERATIONS FOR PROVIDING LANGUAGE ACCESS IN A PROSECUTORIAL AGENCY

FEDERAL COORDINATION AND COMPLIANCE SECTION
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE
SEPTEMBER 2011



President Johnson Signing the Civil Rights Act of 1964

CONSIDERATIONS FOR PROVIDING LANGUAGE ACCESS IN A PROSECUTORIAL AGENCY

This tool outlines considerations for ensuring meaningful communication with LEP persons and bringing prosecutorial agencies into compliance with applicable language access legal requirements.

INTRODUCTION

Lack of meaningful access for limited English proficient (LEP) persons who have contact with prosecutorial agencies can impact the accuracy of the evidence presented, taint the outcome of a case, cause negative consequences to the LEP person, and result in a failure to prosecute subsequent crimes.

Consequently, language accessibility is critical in successfully prosecuting cases involving LEP victims, witnesses, and defendants.¹ Further, federal prosecutorial agencies, and state and local agencies that receive federal financial assistance, are required by federal law to ensure meaningful access for LEP persons.

This tool outlines considerations for ensuring meaningful communication

What's in this Tool?

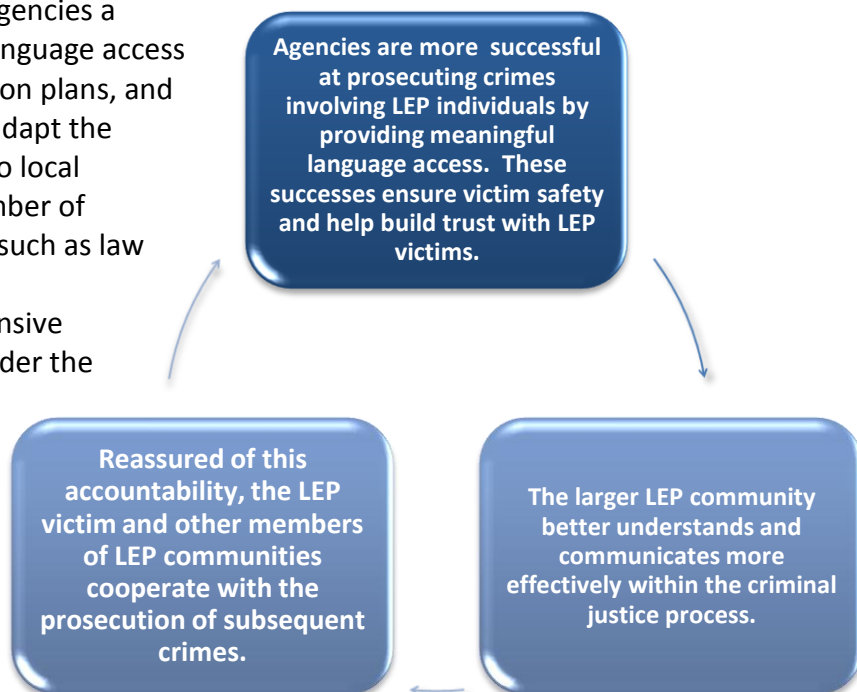
BACKGROUND	3
Legal Authority	3
LEP Persons	4
Definitions	4
GENERAL FRAMEWORK FOR DEVELOPING LANGUAGE ACCESS	
POLICY, DIRECTIVES, PLANS, AND PROCEDURES	5
A Language Access Policy Directive.....	5
Language Access Implementation Plan	7
Procedures	9
ELEMENTS OF IMPLEMENTING LANGUAGE ACCESS POLICY DIRECTIVES, PLANS, AND PROCEDURES	9
Identify LEP Persons Who Need Language Assistance Services.....	10
Assessing Language Assistance Services Needs.....	10
Identifying LEP Persons	11
Language Assistance Services Measures	12
Appointing a Language Access Coordinator	12
Communicating with LEP Persons	13
Accessing Oral Language Assistance Services.....	14
Bilingual Staff with Other Duties	14
Interpreters	15
Translating Documents	17
TRAINING STAFF	18
PROVIDING NOTICE TO LEP PERSONS	18
MONITORING AND UPDATING THE LEP PLAN AND PROCEDURES	19
Continuing Oversight	19
Tracking of Language Services	20
RESOURCES	21

¹ Prosecutors communicate with defendants less frequently. However, when a defendant is without representation or when working with investigators pre-arrest, the agency should ensure that their language access plan and policies extend to communication with a defendant.

with LEP persons and bringing federally conducted and federally assisted prosecutorial agencies into compliance with language access legal requirements.

BACKGROUND

This tool offers prosecutorial agencies a starting point for developing language access policy directives, implementation plans, and procedures. Agencies should adapt the suggestions in this document to local community practices. In a number of jurisdictions, partner agencies such as law enforcement, courts, and parole/probation, have coextensive language access obligations under the law, as described below. We encourage prosecutorial agencies to work collaboratively with other justice system partners to ensure seamless and complementary approaches to the delivery of language assistance services, using the guidelines outlined in this tool.



LEGAL AUTHORITY

Together, Title VI of the Civil Rights Act of 1964, Title VI implementing regulations, and Executive Order 13166 require that federally conducted and assisted agencies provide the language support necessary for meaningful participation by LEP persons in their programs and activities.² Federal financial assistance includes not only direct payments and grant funding, but also training and equipment provided directly or indirectly. Failure to provide meaningful language access is a form of national origin discrimination under Title VI, even if the discrimination is not intentional.³ The Department of Justice (DOJ) has issued guidance to recipients and federal agencies regarding these legal obligations.⁴

² Recipients of all federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000d *et seq.*, and implementing regulations. Similarly worded provisions in the Omnibus Crime Control and Safe Streets Act of 1968, *as amended*, 42 U.S.C. §3789d(c), and implementing regulations, apply to Department of Justice recipients. Language access obligations of federal agencies flow from Executive Order 13166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

³ *E.g.*, *Lau v. Nichols*, 414 U.S. 563 (1974).

⁴ *See, e.g.*, [Department of Justice Guidance To Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#), 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance); [Attorney General Holder](#)

Memorandum from Attorney
General Eric Holder

"Every day, Department staff interview witnesses, victims, and defendants in civil, criminal, and administrative cases and investigations. . . . these examples point to a singular reality: our mission depends on accurate communication with members of the public, regardless of their level of English proficiency."

June 28, 2010 memorandum to all Department of Justice components.

LEP PERSONS

- LEP persons do not speak English as their primary language and have a limited ability to read, write, speak, or understand English.⁵
 - Many LEP persons are in the process of learning English and may read, write, speak, or understand some English, but not proficiently.⁶
 - An individual may have sufficient English language skills to communicate basic information (name, address, etc.) but may not have sufficient skills to communicate detailed information (*e.g.*, medical or eyewitness information) in English.
- LEP persons may not always self-identify and may state that they understand more English than they actually do. They may also fear differential treatment as LEP persons.
 - Context affects English language proficiency. Unfamiliar or stressful situations, including legal proceedings or health-related matters, can affect language ability in individuals who are otherwise proficient in English.

DEFINITIONS

Bilingual – The demonstrated ability to speak two languages fluently and communicate directly and accurately in both English and another language.

Direct “In-Language” Communication – Monolingual communication in a language other than English between a qualified bilingual employee and a LEP person (*e.g.*, Spanish to Spanish).

Interpretation – The act of listening to a communication in one language and orally converting it into another language, while retaining the same meaning.⁷ Interpretation can be carried out in person, by telephone, or by video.

Primary Language – The language in which an individual is most effectively able to communicate.

[Memorandum to DOJ Components Regarding Language Access Obligations under EO 13166 \(June 28, 2010\)](#) and [Attorney General Holder Memorandum to All Federal Agencies Regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 \(February 17, 2011\)](#). These and additional background and technical assistance documents can be found on www.lep.gov.

⁵ Agencies also communicate with persons who are deaf or hard of hearing. While American Sign Language (ASL) and other languages used by persons who are deaf or hard of hearing should be considered in developing Implementation Plans and Procedures, they require unique mechanisms which are governed by other federal laws.

⁶ The U.S. Census Bureau defines LEP as individuals who speak English less than “very well.” [U.S. Census Bureau American Community Survey \(ACS\), What State and Local Governments Need to Know, pg. 12 n. 8, February 2009](#).

⁷ DOJ Guidance at 41,461.

Sight translation – The act of reading material written in one language and converting and communicating it out loud into another language, while retaining the same meaning.

Translation – The replacement of written material from one or more source languages into a target language.

GENERAL FRAMEWORK FOR DEVELOPING LANGUAGE ACCESS POLICY DIRECTIVES, PLANS, AND PROCEDURES

In order to provide appropriate language services, managers and staff alike need to know what to do and how to do it. This may require development of a few different types of documents within the agency. The following sets out a proposed general framework for developing language access policy directives, plans, and procedures. While we set these forth as three distinct types of documents, agencies should tailor the concepts to their own organizational structures.

A LANGUAGE ACCESS POLICY DIRECTIVE

A policy directive sets forth standards, operating principles, and guidelines that will govern the delivery of language appropriate services and may be in the form of a public directive, order, rule, regulation, guidance, or other policy document. The purpose and authority for a policy directive may come from federal, state, or local laws, orders, or ordinances. A policy directive often includes the following components:

A **general policy statement** explains the goals and the expectations of the agency in terms that bind the agency and employees.

For example:

General Policy Statement:

It is the policy of the _____ Agency to take reasonable steps to provide timely and meaningful access for LEP persons coming in contact with the Agency, including victims, witnesses, family members, unrepresented defendants, and community members. The Agency shall ensure this meaningful access in the entire scope of its work including programs, activities, information, services, or benefits to victims, witnesses, defendants when appropriate, and the general public. Personnel will provide free language assistance services to LEP persons whom they encounter or who contact the Agency. Personnel will inform members of the public that language assistance services are available free of charge to LEP persons and that the Agency will provide these services to them.

For example:

Purpose and Authority

The purpose of this policy directive is to establish effective guidelines, consistent with Title VI of the Civil Rights Act of 1964 and Executive Order 13166, for Agency personnel to follow when providing services to, or interacting with, individuals who have limited English proficiency. Following these guidelines is essential to the success of our mission to prosecute crimes.

The **purpose and authority** section provides the legal basis or administrative authority for the agency policy and may explain the nexus between the policy directives and the agency’s mission.

Language Assistance Measures sets forth the standards for language assistance services to be provided to LEP persons. Language assistance measures should be written in a manner that requires staff compliance consistent with the agency’s culture. The measures define acceptable methods for communication with LEP persons and may further elaborate requirements such

as those for data gathering and recording, notice, and training.

Staff Compliance describes the responsibility of each division, unit, or staff member. For example, the sample policy commitment statement above denotes that “all personnel” are required to provide free language assistance services to LEP persons and must inform the public about available language assistance services.

The policy directive may also include **Definitions**. A policy directive may explain any terms referenced within and include some commonly used terms such as those included above.

An agency may choose to have more than one policy directive. For example, an agency may have a policy directive that explains its overall obligation to provide services to LEP persons and ancillary policy directives that support the agency’s overarching LEP goals and objectives. Ancillary policy directives may describe:

For example:

Language Assistance Measures

The _____ Agency has developed methods to identify LEP individuals who access the Agency telephonically or in person. All staff will be trained to and will enter LEP and primary language information for victims, witnesses, defendants, and other relevant individuals in the Agency database. Upon identification, all communication will be conducted with the use of a qualified bilingual staff member, qualified staff or contract interpreter, or through telephonic or video interpretation. All vital written materials will be identified for translation and promptly translated. All unanticipated or individualized vital documents will also be individually translated or at minimum sight translated. These materials include but are not limited to notification letters, victim’s rights information, victim impact forms and restitution forms.

- **Staff Training:** A policy directive on staff training may dictate the frequency, curriculum, and target personnel for ongoing training. For example, this policy directive may mandate training particular to management, interpreters, translators, or frontline staff who encounter LEP persons.
- **Bilingual Staff:** A policy directive on bilingual staff may prescribe the hiring process, when and how to assess the competency of prospective or current bilingual staff, or additional remuneration.
- **Performance Measurement:** A policy directive on performance measurement may indicate the frequency and manner of monitoring and oversight. For example, an agency may elect to conduct an audit of language assistance services on an annual basis.

LANGUAGE ACCESS IMPLEMENTATION PLAN

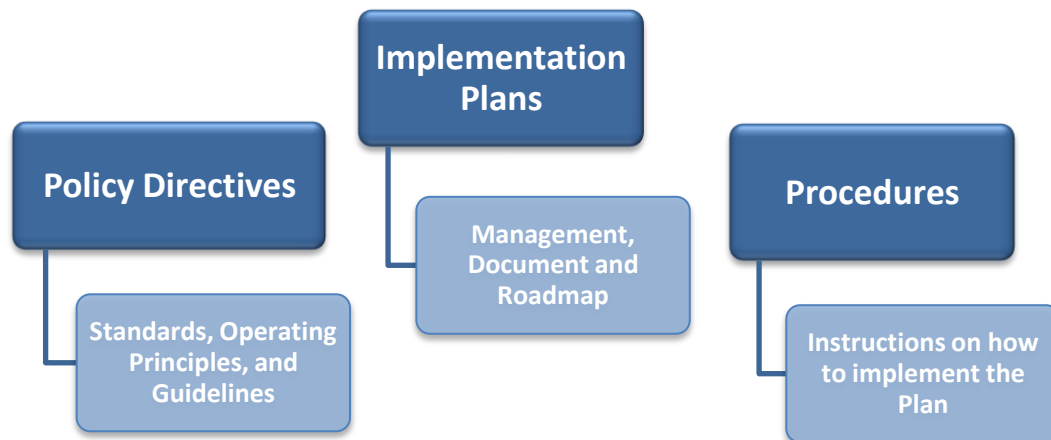
A Language Access Implementation Plan is a management document that provides an administrative blueprint for bringing the agency into compliance with language access requirements. The plan describes how the agency will implement the standards for service delivery delineated in the policy directives, including explaining how the agency will increase its capacity to address the language service and resource needs identified through a self assessment. The Plan is a roadmap that helps agencies: navigate the process of setting deadlines, priorities, and identifying responsible personnel for policy and procedures development; hire, contract, assess, and ensure quality control of language assistance services (oral and written); provide notice of language assistance services; provide training of staff; and conduct ongoing monitoring and evaluation. Key components of a language access plan include:

- **Identification of a Language Access Coordinator(s) and other personnel charged with implementing the plan.**⁸ A plan should describe the management staff, workgroup, committee, or other agency staff responsible for creating and overseeing the policy directives, developing and modifying the language access plan, and establishing and implementing operational procedures. The plan should also detail the chains of command for authority and oversight and explain any coextensive responsibility and coordination with other agencies, divisions, and offices. Because victims and other witnesses are the largest group of LEP individuals with whom a prosecutorial agency will communicate, some agencies designate a Victim Witness Coordinator as the Language Access Coordinator.
- **Identification and assessment of LEP communities.** A plan should address what resources will be needed to assess the number or proportion of eligible LEP persons from each language group in an agency service area and the resources that will be

⁸ See Appendix A for a Language Access Coordinator job description.

needed to provide language assistance services. The plan should also outline the work needed to install or maintain systems for data collection and management.

- A description of the **timeframe, objectives, and benchmarks** for work to be undertaken.
- **Identification of funding and procurement issues** and the steps needed to address them.
- **Notice of language assistance services.** A plan should also describe how the agency intends to implement the changes needed to inform LEP victims, witnesses, defendants, family members, and the general community of the benefits, programs and services for which they may be eligible and of available language assistance services. The plan should include community outreach, written notices, and staff procedures.
- **Training of staff on policies and procedures.** A plan will identify training needs and how they should be addressed.
- **Monitoring and updating the plan, policies, and procedures.** A plan will explain the agency's approach to monitoring how it provides services to LEP individuals, how it monitors plan performance, and the process for reviewing, and, if appropriate, modifying current language access plans, policies, and procedures.
- **Collaboration with LEP communities, law enforcement, courts, and other stakeholders.** Organizations that have significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in linking LEP persons to an agency's programs and its language services. Other criminal justice partners can similarly work with agencies to coordinate language services. The plan can include provisions for creating and conducting outreach and the actions needed to implement an effective system to gather feedback and involve outside entities or individuals in the review process.



PROCEDURES

Procedures are detailed explanations that specify the steps to be followed to provide language assistance services, gather data, and deliver services to LEP individuals. Procedures can be set forth in handbooks, intranet sites, desk reference guides, and reminders at counters. Procedures may entail use of forms or software. Language access procedures often explain how:

- Staff are to respond to telephone calls from LEP persons;
- Staff together track and record language preference information;
- Staff inform LEP individuals about available language assistance services;
- Staff will identify the language needs of LEP individuals;
- Staff are to respond to correspondence (letters and electronic mail) from LEP persons;
- Staff will procure in-person interpreter services;
- Staff will access telephone or video interpreter services;
- To use bilingual staff for LEP services and which staff are authorized to provide in-language service;
- To obtain translation of documents; and
- Staff will process language access complaints.

While we have described language access policy directives, plans, and procedures as three distinct concepts, there is significant overlap between the three areas. This framework helps conceptualize a language access program and provides a flexible model that can be tailored to an agency's particular needs.

ELEMENTS OF IMPLEMENTING LANGUAGE ACCESS POLICY DIRECTIVES, PLANS, AND PROCEDURES

The policy directives, plan, and procedures should cover the categories outlined below and detail the steps to provide meaningful language access.

IDENTIFY LEP PERSONS WHO NEED LANGUAGE ASSISTANCE SERVICES

1. Assessing Language Assistance Services Needs

In order for an LEP person to communicate with an agency employee or *vice versa*, the agency should conduct an assessment and plan for the language assistance services needs in that particular community. The assessment should:

- Identify agency actions, activities, programs, and encounters that involve contact with individuals and groups that may include LEP persons and assess frequency of contact.
- Consider the nature and importance of those actions, activities, programs, and encounters to the LEP person;
- Determine which languages are most commonly spoken by LEP persons, and which are less common, but still likely to be encountered in the geographic service area;⁹
- Review current language assistance resources including access to qualified interpreters and qualified bilingual staff to determine areas of strength and challenges in providing meaningful, timely, and high quality language services;
- Proactively identify standard vital documents (*e.g.*, standard letters to victims and witnesses, victim services brochures, forms) and target languages for translation, methods for ensuring quality control, processes for securing translation services and translated documents, and periodic review of documents requiring updated translation. Create procedures to translate individualized documents; and

Prosecutorial Activities and Programs Require Oral Language Services:

- Walk ins (victims, witnesses, Defendants, other community members)
- Victim initial notification
- Victim and witness interviews
- Provision of Victim Witness services
- Provision of status updates to victims and witnesses
- Victim and witness court testimony
- Defendant interviews and negotiation
- Community forums and individual outreach regarding a case
- Case investigation
- Community Outreach
- Responding to inquiries

⁹ Resources to determine languages spoken include [The U.S. Census Bureau](#) and [The American Community Survey \(ACS\)](#); and [The U.S. Department of Education](#). State and local government agencies and local community agencies may also collect demographic data. Consider the impact of Implementation Plans and Procedures on LEP individuals who speak lesser spoken languages. Even when one non-English language is predominant in the LEP population (*e.g.*, Spanish), other LEP individuals will continue to lack access if Implementation Plans and Procedures focus only on access for Spanish-speaking LEP individuals.

Be mindful that LEP persons who speak languages less commonly found in the geographic service area may be among the most isolated victims and witnesses, making outreach all the more critical

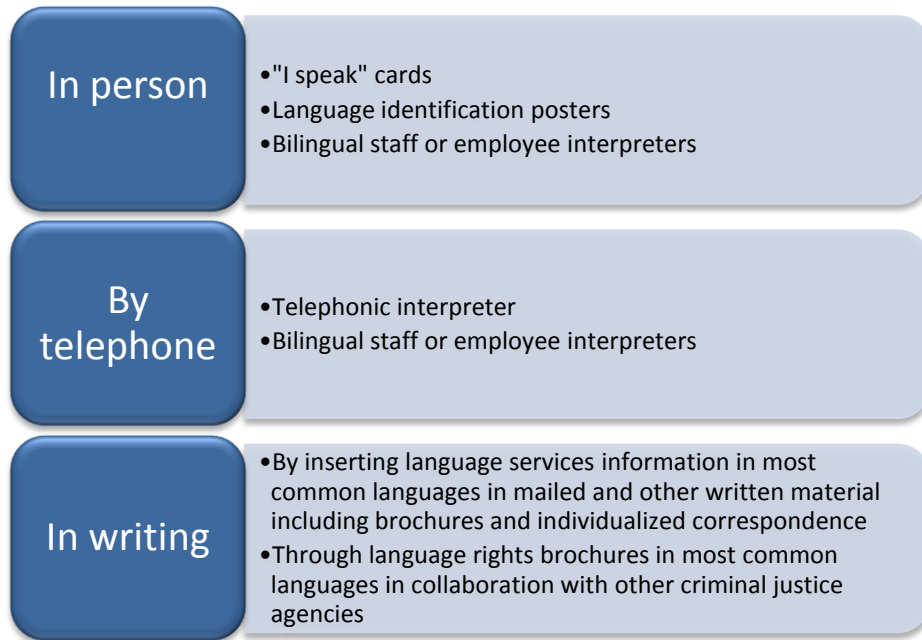
- Create alternatives to standard written translations of forms and documents for LEP persons speaking less commonly encountered languages. These could include, for instance, sight translations at the time the document is provided and tag lines in multiple languages providing a telephone number through which the LEP person can seek to obtain information regarding the document in the LEP person's language.

2. Identifying LEP Persons

The first step in communicating with an LEP person is to ascertain if the person is LEP. This may not always be obvious to the staff person initially communicating with the individual. The LEP person may use English words to convey understanding even if his or her comprehension or speaking ability is limited. Therefore staff should know how to determine whether people who come in contact with the agency are LEP.

Most LEP persons in contact with a Prosecutorial Agency will have already communicated with a law enforcement agency prior to the referral for prosecution. Prosecutorial Agencies will benefit from law enforcement agencies transferring assessed LEP and primary language information about victims, witnesses, and in some cases defendants. Agencies should consider requiring LEP identification information from every law enforcement agency as part of the information collected when charging a crime. Similarly, some prosecutorial agencies work with external victim witness agencies, which may be an initial point of contact for an LEP person. In general, law enforcement, courts, victim witness agencies and other stakeholders can benefit from sharing such information and prosecutorial agencies may consider developing a process to share information about LEP persons with courts.

In many cases, a Prosecutorial Agency will first contact an LEP person telephonically. Staff can attempt to identify the primary language and seek confirmation through a staff interpreter or telephonic interpreter service. The Prosecutorial Agency may consider sending a notice informing the public of language services and rights translated into the most common primary languages.



The staff person should ascertain each identified LEP person's primary spoken language. Staff members should take care not to assume that the LEP person is literate in his or her primary spoken language nor assume that the spoken language has a written form, as some languages are only oral. If communicating in

person, staff can use "I Speak" cards or other language identification cards. The agency may also post information in commonly spoken languages and this may assist in identification. Staff should be trained not to assume that an individual from a certain country speaks the language spoken by the majority in that country. For example, LEP persons from Latin American countries may speak an indigenous language as their primary language and not Spanish. Some countries have multiple distinct languages, which are often misperceived as different dialects with only a slight variance. This information will be critical to any person who is identifying an LEP person's primary language.

An LEP person's primary language should always be recorded so the individual does not have to be identified again by another employee of the same agency or an agency partner. It may be recorded in a file, database, or on the record in a court proceeding. As prosecutor information is typically organized by case, agencies should consider identifying all LEP defendants, victims, and witnesses and their primary language upon opening a case.

LANGUAGE ASSISTANCE SERVICES MEASURES

1. Appointing a Language Access Coordinator and Other Responsible Personnel

A Language Access Coordinator¹⁰ and other responsible personnel are responsible for devising and ensuring that the agency adheres to its language access policy directives, plan, and procedures to provide meaningful access to LEP persons. The Coordinator should be or report to a high-ranking

A Sample Description of Duties for a Language Access Coordinator can be found in Appendix A.

¹⁰ The Coordinator could be an individual or group of individuals.

official within the agency since high-level support is essential to successful implementation. The Coordinator is responsible for language assistance services and may delegate duties but should retain responsibility for oversight, performance, and implementation of the language access plan. Agencies with multiple offices and divisions, including field offices, may find that each component or field office should designate an individual as a local language access Coordinator. As noted above, because the Victim-Witness Coordinator likely has the most contact with LEP persons, some agencies may consider making the Victim-Witness Coordinator the Language Access Coordinator. The language access plan should set forth the name and contact information of the responsible official(s). The Language Access Coordinator should consider creating a working group of key stakeholders to assist in implementing the policies. A sample description of duties can be found at Appendix A.

2. Communicating with LEP Persons

Staff should receive specific instructions and training on how to communicate with LEP persons. Examples include:

- Call-takers learning how to ensure that LEP callers know not to hang up while staff seeks language assistance. For instance, learning how to say “please hold” in commonly spoken languages and incorporating safety mechanisms like getting call-back numbers, where possible, to protect victims placed on hold can help.
- Staff should use first person and speak directly to the LEP person and not to the interpreter.
- Staff should not engage interpreters in side conversations, request their assessment or explanation, or ask them to develop questions and answers.
- In court, an interpreter’s role should be made clear.
- Carefully consider using interpreters in multiple court capacities (*e.g.*, for the prosecution, for the court). An interpreter providing language services to a witness on behalf of a prosecution attorney may be perceived to be biased towards the prosecution if later used as a court interpreter.
- Only qualified interpreters¹¹ should be used to interpret.
 - Family members, children, neighbors, friends, alleged perpetrators, witnesses, acquaintances, and bystanders should not be used as interpreters.

¹¹ Some jurisdictions have language services certification programs but many do not. Instead, an agency may need to seek language services assessment and training programs to qualify individuals to provide language services. Qualification generally requires assessment of an individual’s bilingual skills and training regarding interpreter skills and ethics.

- Bilingual staff should not be viewed as qualified interpreters without training and qualification.
 - Non-stranger crime perpetrators¹² often further control victims by denying their victims language access. This could include withholding information about language services, pretending to interpret, or getting other family or friends to act as interpreters.
- Bilingual staff should be assessed for fluency before they are utilized for important direct "in-language" communication with LEP persons.

3. Accessing Oral Language Assistance Services

Procedures for accessing oral language assistance services should include how and when to access language services for the different points of contact with LEP persons:

For each type of communication, the protocols should provide guidelines for prioritizing the language assistance services options (in-person interpreter, telephonic interpreter, bilingual staff, etc.).

a. Bilingual Staff with Other Duties

Designated bilingual staff can effectively and efficiently use direct "in-language" communication with LEP persons in appropriate circumstances. Some may also be qualified to interpret. Oversight and supervision ensures the proper use of bilingual employees, including:

- Adopting and implementing standards and assessments for qualifying the agency's employees as bilingual, including fluency and knowledge of criminal justice terminology in both languages for the purpose of in-language communication;
- Adopting standards and assessments for bilingual staff to serve as interpreters;
- Training on direct bilingual communication,¹³ interpreter ethics and code of conduct, identification as an employee, and terminology;

In order to protect the integrity of the court proceeding, prosecutors should work closely with courts to ensure that judges also understand the biases and conflicts that may arise from using an unqualified interpreter in a court proceeding.

¹² Non-stranger crimes, as they suggest, are those perpetrated by a party known to the victim. Common non-stranger crimes include domestic violence, sexual assault, child abuse, trafficking in persons, and crimes committed by employers against employees.

¹³ A bilingual person may be sufficiently proficient in English and a foreign language to have direct monolingual conversations in that foreign language with an LEP person, but not sufficiently proficient to orally convert a foreign language statement back into English. Likewise, the person may be fluent in both languages, but unskilled in interpreting and untrained in the various

- Maintaining a directory, including language(s) spoken, contact information, shifts, and assignments of employees qualified to provide in-language communication, interpretation, and translation;
- Tracking; and
- Recruitment, hiring, and developing compensation standards, and making assignments.

Using bilingual staff should be carefully considered in the context of obtaining information that may be discoverable or may be the subject of testimony. An interpreter could be called to testify and have his or her competency questioned. If the bilingual staff serving as the interpreter is not qualified or is perceived by the LEP person as biased towards or against them because of their role as a prosecutor, this could bias the witness testimony and other evidence. Some witnesses perceive interpreters as their advocates and seek counsel in making statements. Because of the dual role an employee may play in conducting a witness interview and simultaneously acting as an interpreter, agency employees should only be used as interpreters during witness interviews if they have identified themselves as employees of the agency and are trained in utilizing proper interpretation protocols. Carefully consider use of bilingual staff in such instances, even if qualified. Some prosecuting agencies do not allow their employees to serve as interpreters during witness interviews.

In addition, bilingual staff sometimes report being overburdened by additional duties, particularly when they do not receive compensation for the additional duties. As noted below, agencies should consider whether they have the demand for and capacity to hire bilingual staff whose primary role is to interpret. By communicating through qualified interpreters instead of bilingual staff with other primary duties, an agency lessens its risk of bias, breach of confidentiality, or other ethical considerations.

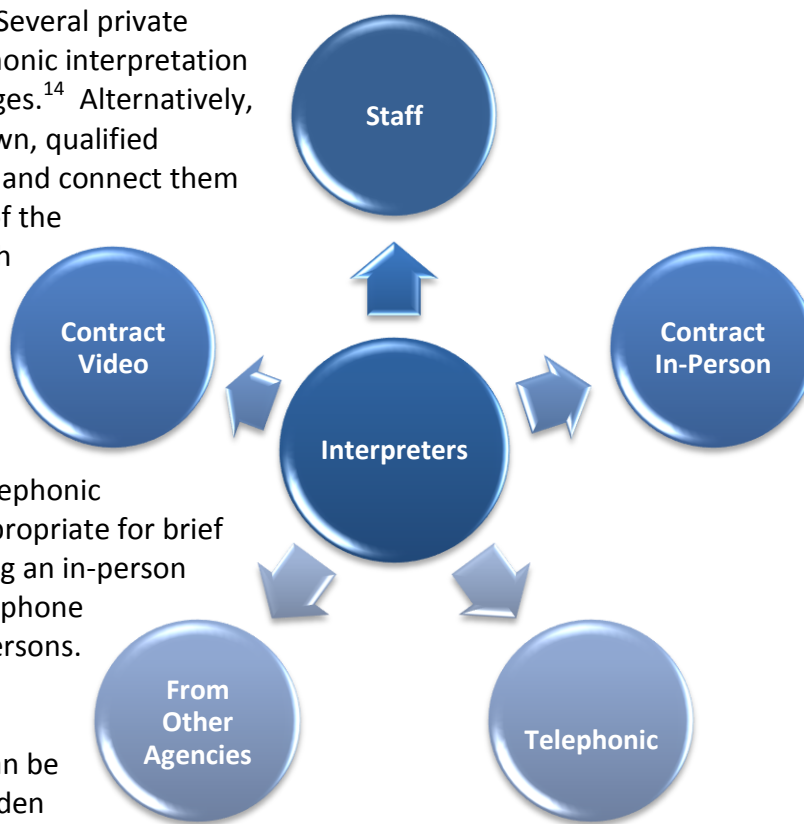
b. Interpreters

Options for accessing qualified interpreters include:

- Staff interpreters: As noted in section 3(a), bilingual employees can be trained, qualified, and employed by the agency to perform interpretation services. These may include bilingual employees who have passed language proficiency assessments and undergone rigorous training to serve in dual roles as sworn employees and interpreters.
- Contract in-person interpreters: These individuals are employed by another government, nongovernmental, or private agency, or self-employed as an interpreter.

modes of interpretation and appropriate use of those modes (simultaneous, consecutive, sight). They may also lack an understanding of the importance of conveying true meaning rather than literal translation or conveying tone. For these reasons, it is important to provide the bilingual employee and other staff with information on whether a bilingual employee is qualified only for direct "in-language" communication, or whether he or she is also qualified to act as an interpreter.

- **Telephonic interpreters:** Several private companies provide telephonic interpretation in a wide range of languages.¹⁴ Alternatively, agencies can contact known, qualified interpreters on their own and connect them telephonically. Because of the limitations associated with an interpreter not being able to see the LEP person and her non-verbal communication, and the potential for technological barriers, telephonic interpretation is most appropriate for brief encounters, while awaiting an in-person interpreter, or during telephone conversations with LEP persons.



Despite some limitations, telephonic interpreters can be particularly helpful in sudden and unplanned interpretations, telephonic communications, or for lesser spoken languages. Agencies should consider contracting with a telephonic interpretation company to ensure telephonic interpreters are available when needed. Procedures should include directions giving all staff authority to use this service and provide telephone numbers, pin codes, and any other instructions required.

- **Contract video interpreters:** Remote video interpretation can address both the costs and time constraints of travel and the limitations of telephonic interpretation. This type of interpretation is particularly useful to address situations in which a known qualified interpreter or an interpreter with no personal knowledge of the case is far away. Video interpretation requires infrastructure costs but may be more cost-effective long term in areas where there are significant costs associated with interpreter travel.
- **Interpreters from other agencies:** These individuals are available through a resource-sharing or other formal arrangement to interpret according to agency guidelines.

¹⁴ Note that commercial telephonic interpretation services vary in their quality. Such services do not always identify the interpreter which may be problematic later if there is a concern about the interpretation. Telephonic services do not provide an LEP person with the continuity of one interpreter as each phone call typically will have a different person interpreting. Nevertheless, all staff should also be trained to note the name and identification number of any telephonic interpreters who provide language services.

Vital documents may include, but are not limited to:

- Brochures describing language rights in most common primary languages;
- Information for victims and witnesses including accessing Victim's Services Advocates, seeking services and protections for domestic violence and sexual assault victims, applying for Crime Victim Assistance (VOCA) funds, and immigration (including U-visa certification process);
- Information on how to request records or seek a protective order;
- Target letter/Subject letter;
- Victim notification letter;
- Information for victims and witnesses regarding court logistics;
- Information regarding restitution;
- Notification of a bench warrant;
- Victim impact statements;
- Information on the conditions of protective orders;
- Documents requiring a defendant's signature (admonishments, consent forms, waivers, etc.)
- Case specific documents or in some circumstances evidence;
- Proffer Letter;
- Letter of immunity;
- Court and trial notification letters;
- Diversion and probation notifications;
- Complaint and complaint process documents; and
- Other materials including language resource lists, signs, and instructions on internal websites.

4. Translating Documents

The agency should ensure that vital documents are translated into the most frequently encountered languages in service area. The plan or procedures should inform staff of how to obtain translations for documents submitted to them by LEP persons, as well as how to obtain translations of the agency's correspondence directly to LEP persons. The agency should ensure quality control of translations. Typically, this is done by having a second translator edit each document. Translations companies frequently include this in their services, but this should be emphasized when contracting. Translation should always be undertaken by individuals. Agencies should avoid computerized translation programs, which lack accuracy. When possible, agencies should identify standard information (e.g., Miranda rights) across various criminal justice agencies to minimize duplicative translation costs.

When documents are not translated into the needed language, the plan and procedures should explain the process for sight translation of documents. Specifically, it should clearly outline the steps to take to identify a sight translator and establish a reasonable time frame for such translation.

TRAINING STAFF

The plan should include a regular training schedule to ensure that all employees receive training on the policy directive, plan, and procedures and how they are implemented. Training should also practical skills building including role playing and other exercises. The training should cover the following topics:

- The Policy Directive, Plan, and Procedures;
- How to identify LEP persons;
- Immediate steps to take while waiting for language services;
- How to work with an interpreter;
- How to access oral language assistance services, translation services and sight translation;
- How language services will be measured as part of job performance;
- Methods and goals for conducting community outreach;
- Accessing centralized information to identify LEP persons and seek language assistance services; and
- Translated materials and how they are disseminated.

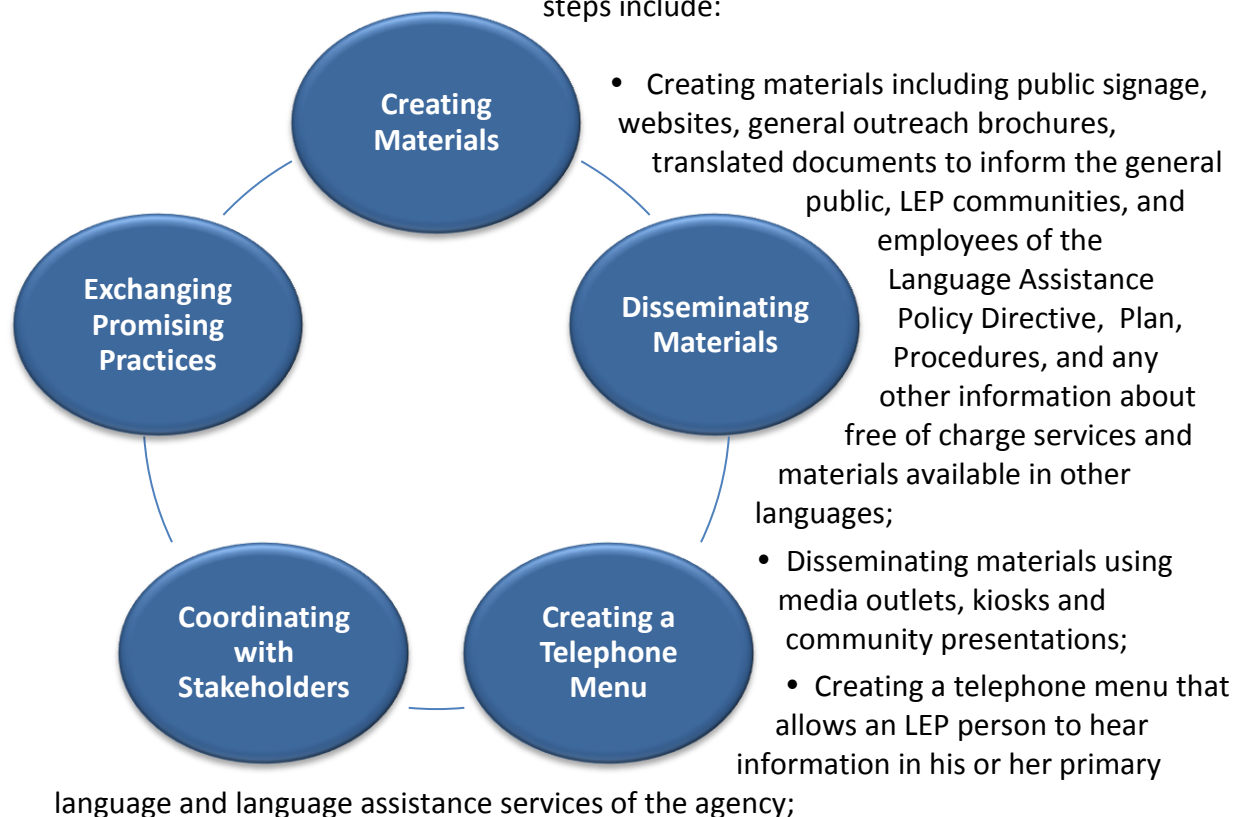
PROVIDING NOTICE TO LEP PERSONS

Community Outreach

When language assistance services are not readily available at a given agency, LEP persons will be less likely to participate in or benefit from its programs and services. As a result, many LEP persons may not seek out agency benefits, programs, and services; may not provide beneficial information or file complaints; and may not have access to critical information provided by your agency because of limited access to language assistance services. Thus, self-assessments of the number of current LEP contacts may significantly underestimate the need for language services.

Crime perpetrators can also take advantage of this misconception and discourage their victims from seeking law enforcement or prosecutorial protection. In order for a prosecutor's agency to ensure that LEP victims and witnesses have the same access to the criminal justice

system, the agency should make every effort to reach out to communities and other agencies. Such outreach will also improve language access coordination across different agencies and provide the opportunity for seamless access throughout the criminal justice system. Effective steps include:



- Coordinating with other agencies and stakeholders, including courts, schools, and agencies serving as initial points of contact with LEP persons (*e.g.*, law enforcement), to ensure consistent identification of LEP status, primary language, and similar information; and
- Exchanging promising practices and challenges with other governmental and non-governmental agencies.

MONITORING AND UPDATING THE LEP PLAN AND PROCEDURES

Continuing Oversight

Agencies should continuously monitor and assess language access within the agency by:

- Gleaning updated community demographics and language needs through schools, faith communities, refugee resettlement agencies, the census, and other resources;
- Monitoring other language access protocols and tools, current promising practices, and available language services;

- Surveying LEP persons and identifying and implementing a language accessible system for receiving and responding to complaints/suggestions by LEP persons, community members and employees regarding improvements to language assistance services measures;
- Monitoring usage of language services and compliance with policies;
- Surveying staff on how often they use language assistance services and soliciting suggestions for improvement;
- Assessing, and seeking periodic feedback from stakeholders about the agency's effectiveness and performance in ensuring meaningful access for LEP persons;
- Considering new resources available, including funding, collaborations, human resources, and mechanisms for ensuring language access;
- Revising translated documents and translate into additional languages as needed; and
- Modifying the plan and procedures as appropriate.

Tracking of Language Services

To implement a language access plan effectively, the agency should develop tools to support the various steps. For instance, databases and filing systems should identify LEP persons and list their primary language. This can be easily accomplished by adding fields for LEP and languages spoken and ensuring that any staff can input this information for every person coming in contact with the agency. Law enforcement should be consulted to determine whether there are LEP persons involved in the case.

The agency should also create and maintain a contacts list of all trained and qualified staff interpreters, contractor interpreters, and translators. The centralized information should include their contact information, availability, and the rate they charge, along with any notations regarding the agency's prior experience using the interpreter or translator. The agency should also track document translation dates and new or updated English-language vital documents to ensure translated in a timely fashion.

RESOURCES

U.S. Department of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455 (June 18, 2002).

U.S. Department of Justice, *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs* (May 9, 2011).

For additional information regarding Title VI, language access obligations and tools, visit www.lep.gov. For suggested comments, please contact LEPTools@usdoj.gov.

Appendix A:

LANGUAGE ACCESS COORDINATOR Sample Description of Duties

The Language Access Coordinator is responsible for overseeing the implementation of the Department's Language Access Policy Directives, Plan and Procedures. The Coordinator reports to the Department Head and also delegates responsibilities to several other Department personnel who assist with implementation. The team is outlined in the Department's Plan.

The Coordinator oversees implementation of the following Tasks which can be delegated to other personnel including human resources and procurement:

- Develop Procedures to implement the Plan;
- Identify qualified interpreters and translators to be included in interpreter database;
- Create interpreter, bilingual staff, and translator qualifications standards;
- Outline measures to ensure quality control of interpreters and translators;
- Develop a pay structure for contract language assistance services;
- Train and test or contract with appropriate agencies to train and test bilingual individuals including staff who perform language assistance services;
- Maintain a regularly updated list of all trained and qualified bilingual employees and contract interpreters, and include their availability, and contact information;
- Assign qualified bilingual employees and interpreters to perform language assistance services functions;
- Develop a procurement strategy for contract language assistance services providers.
- Provide input in budgetary and procurement matters related to implementation of the language access policy, plan, and procedures;
- Track utilization of bilingual employees and contract interpreters;
- Address hiring and personnel practices to increase staff language capacity (*e.g.*, creating financial or nonfinancial incentives for qualified bilingual employees who frequently provide language services);
- Search for funding and other resources to support interpretation and translation, technological and other infrastructural support, and staffing;
- Create and coordinate a working group of stakeholders including appropriate law enforcement, public defender, courts, correctional agencies, and community based agencies.
- Oversee personnel and performance of employee and non-employee interpreters and translators
- Review and modify the Plan as needed