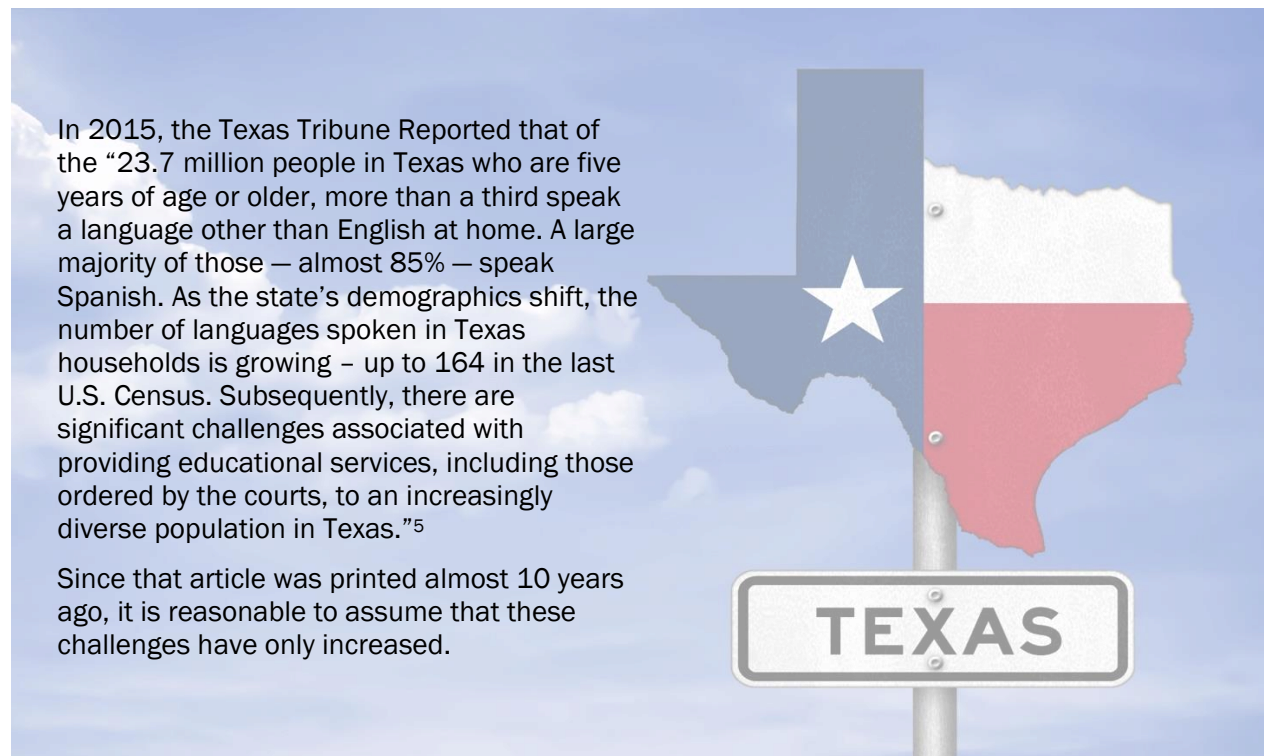


# Reducing Recidivism: Language Barriers Related to Court Ordered Alcohol Education in Texas

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In 2023, Texas was the third worst state for impaired driving.<sup>1</sup> There were 340 impaired driving arrests made per 100,000 licensed drivers in the state.<sup>1</sup> When you consider the continuing increases in population, we can only expect the problem to get worse without effective countermeasures. According to the US Census Bureau, Texas has more than 30.5 million people living in the state and more than 17% of that population were born outside the US with many of those reporting that they did not understand English very well.<sup>2, 3, 4</sup> Since our state has a long border with Mexico, the state is fairly well equipped to translate important legal and civic information into Spanish. However, over the last decade, Texas has become home to a diverse group of immigrants whose first choice of communication is not English or Spanish.<sup>5</sup>



This phenomenon has presented significant challenges to the state’s criminal justice system especially in regard to court ordered education required for impaired driving offenses.

The processing of driving while impaired (DWI and DUI) arrests and adjudication is complex. There are a number of directives associated with the punishment phase of a DWI/DUI conviction.<sup>6</sup> One such directive is that as a condition of probation, an offender shall

complete an alcohol offender education course.<sup>7</sup> Offender education courses are typically completed in a traditional classroom environment due to the rigorous requirements for training delivery set forth by the state. Most course deliveries are offered in English, but some are instructed in Spanish. The offender is responsible for paying the fees associated with taking the course as well as demonstrating to the court when they have completed it appropriately.

As Texas has become home to a more diverse population, courts are facing significant challenges when ordering alcohol offender education courses since there is not adequate access to the course in a language other than English. Judges have highlighted this problem to the Texas Impaired Driving Task Force and the Texas A&M Transportation Institute (TTI) has accepted the task to investigate ways that language barriers could be mitigated. The results of this investigation are summarized in this report.

## Purpose

The purpose of this document is to 1) investigate the barriers to effective foreign language communication among defendants who have been ordered to attend and complete court ordered alcohol education as a condition of sentencing and 2) to assess and recommend potential solutions to address language barrier issues that both instructors and participants may experience during the delivery of court ordered alcohol education.

The problem of language barriers in court ordered alcohol education was initially presented to the Texas Impaired Driving Task Force. The assumption was that offenders with limited English proficiency who were assigned to court ordered alcohol education face substantial challenges with the communication needs required to complete a course. The learners confront major language (vocabulary/grammar) challenges, psychological hurdles (fear of making mistakes or speaking in front of the class), variances with teaching methods, and impediments to effectively translate English into their native language. Further complicating the matter is that instructors and program managers feel helpless to develop and distribute learning materials to students who lack or have limited ability to communicate in English. This paper highlights potential strategies for addressing these communication barriers while bridging the variance between cultural and learning differences.

## Introduction

Globalization and the use of languages other than English have changed the traditional paradigm of instruction and learning across a wide range of educational environments. Educators in the United States (U.S.), across academic, professional, and civic disciplines, regularly face the challenge of having to instruct students with limited or no understanding of English. Instructors often have a classroom with participants who speak several different languages and bring with them diverse cultures related to learning.<sup>8</sup> Educators and learners are frustrated with the lack of knowledge and skills needed to navigate existing language barriers while engaging in traditional face-to-face or virtual learning environments.

Effective learning requires communication - ability for people to convey information through an exchange of ideas, feelings, intentions, expectations, perceptions, and commands.<sup>8</sup> Obstacles to successful communication are rooted in the inability for two or more persons to understand, express, and interpret concepts, thoughts, feelings, facts, and opinion through

oral and written form. This includes the ability to listen, speak, read, and write in an appropriate range of constructs.<sup>8</sup>

Barriers to learning may include personal, emotional, economic, attitudinal, situational, organizational effects, as well as variances between the instructor and participant.<sup>8</sup> The most fundamental barrier being language (oral and written) incompatibility. Language barriers occur when people that need to communicate, but do not share a common language. This usually occurs when people are not speaking their native language or are trying to communicate in a language they do not understand well. In the case of immigrants that relocate to the U.S. from other countries, they may not have the necessary command of the secondary language which makes it difficult for them to understand what is happening when placed in an English-speaking learning environment.<sup>5,8</sup> Any of these listed barriers can unfavorably affect the ability of a participant to comprehend content, therefore adversely impacting the intended benefits of the course.

### Impact on Texas Impaired Driving Countermeasures

Impaired driving is a significant transportation safety problem in Texas. Not only does DWI affect roadway safety, but it also has a significant impact on the State’s court systems in terms of the number of cases that are filed and processed each year. In order to provide context, a snapshot of the DWI docket (2023) within Texas district, county, and constitutional courts has been provided in Table 1.<sup>9</sup>

Table 1. DWI Court Docket Summary for 2023

	DWI 1	DWI 2	Felony DWI	Totals
<b>District Courts</b>				
Total Cases on Docket	0	0	24,774	24,774
Convictions	0	0	7,542	7,542
Deferred Adjudication	0	0	215	215
<b>County Courts</b>				
Total Cases on Docket	148,832	25,147	0	173,979
Convictions	26,092	8,551	0	34,643
Deferred Adjudication	14,303	681	0	14,984
<b>Constitutional Courts</b>				
Total Cases on Docket	15,073	2,232	0	17,305
Convictions	1,666	562	0	2,228
Deferred Adjudication	677	19	0	696
<b>Totals</b>				
Total on Docket	163,905	27,379	24,774	216,058
Total Convictions	27,758	9,113	7,542	44,413
Total Deferred Adjudications	14,980	700	215	15,895

Source: Texas Office of Court Administration: Activity Detail Report from January 1, 2023 through December 31, 2023

In DWI cases, alcohol education and other interventions are ordered by the courts based upon statute. The fact that research has illustrated that alcohol offender education programs reduce recidivism also provides support. Yet if offenders are not able to complete these courses due to language barriers, the State risks being unable to take advantage of the benefits related to this countermeasure. As such, DWI re-offending in this segment of the population has the potential to increase.

This problem has been highlighted by judges across the state including those in northwest Texas, where there has been a significant influx of immigrants into the area to work in the agriculture industry. The following example highlights the challenges faced by courts in that area of the state.<sup>10</sup>

### **The Case of Potter County**

Named after Robert Potter, an original signer of the Texas Declaration of Independence, Potter County was created in 1876 and is the hub of the Texas panhandle. The county seat, located in Amarillo, has a population of approximately 120,000 residents. The unemployment rate is low in part to a community that is rich in industry including: energy, research and development, agriculture, copper refining, fiberglass production, defense contracts, and oil and gas production.

With a historic and longstanding relationship with the livestock industry, raising and processing cattle is the county's chief agricultural activity. Cattle and "beef production are part of Amarillo's culture and history, with nearly 28 percent of cattle fed in the United States coming from the Texas Panhandle region."<sup>10</sup>

In 2022, Producer Owned Beef constructed a new beef processing plant that handles an average of 3,000 cattle per day. The facility supports over 1,500 jobs and generates over \$670 million dollars in annual revenue.<sup>10</sup> Many of the jobs at this and other similar processing facilities attract labor resources in the form of immigrant workers. Most recently, a large number of Somali and Burmese immigrants have relocated to Potter County and taken positions in the beef processing industry.

Concerns have been raised about the number of Burmese and Somali immigrants who have been arrested and convicted of driving while intoxicated (DWI). As a condition of sentencing, many of Potter County's Burmese and Somali immigrant offenders are placed on probation with a mandatory condition that requires the offender to attend and successfully complete a court ordered alcohol education course.

Attending a court ordered alcohol education course for those who speak and write English is easy, but many of the new immigrants are incapable of utilizing English as their primary language. Because of this, the judiciary is often reluctant to require non-English speaking probationers to attend court ordered alcohol education. Instead, the judge with good cause, may choose to waive the education requirement especially in cases where the program provider is unable to make provisions for learners who do not communicate well in English.

Since alcohol education post-conviction is considered a countermeasure that works in deterring drivers from reoffending, this requirement was included in the Texas Code of Criminal Procedure. The inability for an offender to take the court ordered alcohol education may adversely affect recidivism rates, therefore it is a challenge that requires attention.

This dilemma of offenders not being able to communicate in English well enough to effectively participate in offender education is not exclusive to just the judiciary and education program providers in Potter County, it is a statewide issue that is faced by all courts and ancillary court services.

## Methodology

As part of this inquiry, it was necessary to examine state legislative regulations that influence court ordered alcohol education courses; modes of instructional distribution to participants; reasonable accommodations for non-English speaking/writing student learners; and alternative instructional methodology that could be employed to reach non-English speaking learner groups.

### Review Legislative Requirements - Texas Administrative Code (TAC)

The following figures summarize the requirements for court ordered alcohol education courses and instructors based on the information provided in the Texas Administrative Code (TAC).<sup>11</sup> Any considerations related to these education courses must meet or exceed the requirements provided for in the TAC. It should be noted that the requirements related to on-line education may need to be revised if stakeholders recommend an asynchronous approach to delivering courses. Asynchronous can meet all of the requirements provided for in the TAC.

<h2 style="text-align: left; margin: 0;">General Program and Course Requirements - All Programs</h2>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) Except where noted, the program and course requirements in this chapter apply to in-person and online court-ordered programs.</p> <p>(b) All court-ordered programs must use the applicable curriculum approved under §90.40, including all required videos, slides or transparencies, participant workbooks, booklets, and other resources or written materials. The applicable curriculum must be presented in the prescribed manner and sequence.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	<p>(c) A single instructor must teach the entire course for all programs, except for DWI Intervention Programs, which may allow team-teaching utilizing no more than two instructors.</p> <p>(d) Instructors must require participants to complete all class modules within a course in the proper sequence.</p>
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	<p>(e) The program provider must make provisions for persons unable to read and/or speak English. All classes in a single course must be taught in the same language.</p> <p>(f) The instructor must screen each participant and offer appropriate referral information to the participant, based upon the numerical score and accompanying referral recommendations on the approved screening instrument required to be administered. The instructor must administer the screening instrument, or under the instructor's direct supervision.</p>
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	<p>(g) The program provider or instructor for each program must make available a current listing or roster of available chemical dependency counseling and treatment resources in the area to each participant whose numerical score and accompanying referral recommendations on the approved screening instrument indicate a potential substance abuse problem requiring further evaluation.</p>
<b>RULE §90.42</b>	GENERAL PROGRAM AND COURSE REQUIREMENTS ALL PROGRAMS	<p>(h) All required registration, initial data collection, and administration of the screening instrument must be completed before commencement of the first-class module.</p> <p>(i) At the end of each course, the instructor for each program must administer a participant course evaluation.</p> <p>(j) The instructor for all programs must conduct an exit interview with each participant, as outlined in the applicable educational program manual.</p>

<h2 style="text-align: center; margin: 0;">Additional Course Requirements for the DWI Education Program</h2>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) In addition to the requirements under §90.42, each DWI Education Program provider must:</p> <p>(1) provide a minimum of 12 hours of instruction per course.</p> <p>(2) provide no more than four hours of instruction in any one day; and</p> <p>(3) conduct courses and each class with no more than 30 participants and with no fewer than three participants.</p> <p>(b) The provider must administer and evaluate pre-course and post-course test instruments for each participant.</p> <p>(c) Within ten working days after completion of the course, the instructor must notify the appropriate community supervision and corrections department and forward a copy of the certificate of completion to the Texas Department of Public Safety (DPS).</p> <p>(d) If the deadline for completing the course is less than ten working days after the participant's successful completion of the course, the instructor, prior to the deadline, must:</p> <p>(1) forward a copy of the certificate of completion to DPS; and</p> <p>(2) notify the appropriate community supervision and corrections department or the court.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	
<b>RULE §90.45</b>	ADDITIONAL COURSE REQUIREMENTS FOR THE DWI EDUCATION PROGRAM	



<b>Additional Course Requirements for DWI Intervention Programs</b>		
<b>Title</b>	ECONOMIC REGULATION	(a) For purposes of this section, an individual session is defined as an individual meeting between instructor and participant in which the instructor checks the participant's workbook to monitor homework and student progress and assists with the participant's self-improvement techniques.
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	(b) In addition to the requirements under §90.42, each DWI Intervention Program provider must:
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	(1) provide a minimum of 30 hours of class instruction per course. (2) conduct class modules which are not longer than three hours in length and not shorter than two hours in length. (3) conduct no more than one class module per day. (4) conduct no more than two class modules per week.
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	(5) conduct courses and each class with no more than 15 participants and with no fewer than three participants. (6) provide make-up class modules for a maximum of two excused absences per participant; and
<b>RULE §90.46</b>	ADDITIONAL COURSE REQUIREMENTS FOR DWI INTERVENTION PROGRAMS	(7) conduct a minimum of two individual sessions with each participant and an individual exit interview with each participant. (c) Within ten working days after completion of the course, the instructor must notify the appropriate community supervision and corrections department and forward a copy of the certificate of completion to Texas Department of Public Safety (DPS). (d) If the deadline for completing the course is less than ten working days after the participant's successful completion of the course, the instructor, prior to the deadline, must: (1) forward a copy of the certificate of completion to DPS; and (2) notify the appropriate community supervision and corrections department or court.



<b>In-Person Classroom Facilities &amp; Equipment</b>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) Court-ordered programs and instructors must conduct all in-person classes in appropriate classroom facilities and settings that comply with the Americans with Disabilities Act, 42 United States Code, §12101 et seq. The classrooms and setting must be conducive to study and must have:</p> <ul style="list-style-type: none"> <li>(1) enough tables or desks to accommodate each participant without crowding.</li> <li>(2) enough chairs sufficient to seat each participant.</li> <li>(3) sufficient lighting.</li> <li>(4) appropriate acoustics and climate control; and</li> <li>(5) classroom facilities easily accessible to all class participants.</li> </ul> <p>(b) Program providers and instructors must not conduct in-person class modules at a personal residence. Each instructor that instructs an in-person court-ordered program must be physically present in the classroom with the participants for each class.</p> <p>(c) Audiovisual equipment must be in good working order and in good condition for use in class instruction.</p> <p>(d) Television monitors and projection screens must be at least 25 inches diagonally and videos and slides/transparencies must be maintained in a high-quality condition.</p> <p>(e) Slides/transparencies and videos must be displayed in a manner which produces a clear image and allows all participants to have an unobstructed view.</p> <p>(f) Program providers and instructors must ensure that no portion of any court-ordered program course is videotaped or otherwise recorded or broadcast.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	
<b>RULE §90.47</b>	IN-PERSON CLASSROOM FACILITIES & EQUIPMENT	

<h2 style="margin: 0;">Online Program Requirements</h2>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) A program provider that offers or provides an online court-ordered program to participants must:</p> <p>(1) ensure that it has access to internet service with sufficient bandwidth to successfully provide, without interruption to the participants, in such a manner that is conducive to instruction and comprehension.</p> <p>(2) provide instructors with the proper equipment that is in good working order and that allows for virtual, real-time, and interactive presentation of all course materials; and</p> <p>(3) confirm that all classes are instructed using current department-approved curriculum and materials, and that all classes are conducted in accordance with department rules and current laws.</p> <p>(b) An instructor must ensure that the online classroom camera is clearly focused on the instructor at all times, and that all participants remain on their cameras throughout the entire class. Instructors and participants are allowed to be off camera during course break periods.</p> <p>(c) An instructor must take the attendance of participants on the course roster and confirm audio and visual function of the participant's equipment from each participant before the start of each class. The instructor must not admit any participant into an online class if the participant does not have functioning audio and video capability on his or her equipment.</p> <p>(d) A program provider must not enroll a participant into an online court-ordered program if the participant does not have compatible equipment that can allow the participant to take, attend, or complete the program.</p> <p>(e) An instructor must remove any participant from class who fails to remain visible on the participant's camera and report the incident to the program provider at the end of the class. The program provider must record the incident in the course records. The instructor or the program provider must not present a certificate to any participant who fails to complete a court-ordered program.</p> <p>(f) The online program provider is responsible for the administration of pre-course testing to participants, where applicable, and ensure the validity and security of post-course testing using the same or similar methods and procedures as would be used for in-person court-ordered programs.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	
<b>RULE §90.48</b>	ONLINE PROGRAM REQUIREMENTS	

<b>Certificate of Program Completion for Participants</b>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) A program provider must ensure that the instructor provides each participant who successfully completes the applicable court-ordered program a certificate of program completion prescribed by the department within five days of successful completion. If an exit interview is required, the program will not be deemed to be successfully completed and a certificate of program completion must not be issued until the exit interview has been conducted.</p> <p>(b) A program provider that offers or provides a court-ordered program may provide the certificate to the participant by regular mail or present it to the participant after successful completion of the course. A program provider shall not provide a certificate to a participant by electronic means.</p> <p>(c) Certificates shall only be issued by the department to the program provider. All program providers must maintain an ascending numerical accounting record of all issued and unissued certificates.</p> <p>(d) The program provider is responsible for ensuring that an original certificate of program completion is issued to each participant who successfully completes a program. The program provider must retain one copy of the certificate in its records.</p> <p>(e) Each program provider must develop procedures for issuing duplicate certificates.</p> <p>(1) The procedures must ensure that the duplicate certificate is a new certificate, is clearly identified as being a duplicate of a previously issued certificate and includes the control number of the previously issued certificate.</p> <p>(2) The court-ordered program must indicate at the bottom of the course roster on which the participant's original control number was recorded that a duplicate certificate was issued and shall show the new control number and date of issuance for the duplicate certificate.</p> <p>(f) If a program provider allows its license to expire or otherwise loses its license, it must, within 30 days after expiration or other termination of the license, return all unused certificates of program completion to the department.</p> <p>(g) A program provider is responsible for the certificates in accordance with this subsection.</p> <p>(1) A program provider may request the serially numbered certificates by submitting an order with the department's authorized vendor stating the number of certificates to be purchased and include payment of all appropriate fees.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	
<b>RULE §90.49</b>	CERTIFICATE OF PROGRAM COMPLETION FOR PARTICIPANTS	

<b>Certificate of Program Completion for Participants</b>		
		<p>(2) A program provider may not transfer unassigned certificates to a licensed program other than the licensed program for which the certificates were ordered.</p> <p>(3) The program provider must maintain effective protective measures to ensure that unissued certificates are secure. The program provider must report all unaccounted-for certificates to the department within fifteen (15) working days of the discovery of the incident. In addition, the program provider must investigate the circumstances surrounding the unaccounted-for certificates. A report of the findings of the investigation, including preventative measures for recurrence, must be submitted to the department within thirty (30) days of the discovery.</p>

<b>Instructor License Requirements</b>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) An individual who teaches any court-ordered program must have a current instructor license issued by the department, and the appropriate instructor license endorsement for the specific type of court-ordered program the individual is teaching.</p> <p>(b) An instructor must instruct only for a program provider that holds an appropriate endorsement for the specific type of court-ordered program that the instructor is teaching.</p> <p>(c) An instructor must utilize only the department-approved program curriculum for the specific type of program for which the instructor holds an appropriate license endorsement.</p> <p>(d) An instructor must comply with all requirements of this chapter.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter B</b>	INSTRUCTOR REQUIREMENTS	
<b>RULE §90.20</b>	INSTRUCTOR LICENSE REQUIRED	

<h2 style="text-align: center; color: #4F81BD;">Program Requirements for Curriculum and Materials - All Programs</h2>		
<b>Title</b>	ECONOMIC REGULATION	<p>(a) Court-ordered programs must use the most current version of the uniform curricula and of any screening instrument approved by the department. The same curriculum and screening instruments are used for in-person and online court-ordered programs.</p> <p>(b) The following curricula are approved for the applicable program:</p> <p style="padding-left: 20px;">(1) Alcohol Education Program for Minors – the Alcohol Education Program for Minors Instructor Manual.</p> <p style="padding-left: 20px;">(2) Drug Offender Education Program – the Texas Drug Offender Education Program Instructor Manual.</p> <p style="padding-left: 20px;">(3) DWI Education Program – the Texas DWI Education Program Instructor Manual; and</p> <p style="padding-left: 20px;">(4) DWI Intervention Program – the Texas DWI Intervention Instructor Program Manual.</p> <p>(c) Any supplemental media used in a court-ordered program must have prior written approval from the department. The court-ordered program seeking approval must demonstrate that it meets the following minimum conditions for approval of supplemental media:</p> <p style="padding-left: 20px;">(1) the instructor must still use all media required by the applicable approved curriculum for each module.</p> <p style="padding-left: 20px;">(2) the instructor, with use of the supplemental media, must exceed the minimum number of classes and hours of instruction required per course by the length of any supplemental media; and</p> <p style="padding-left: 20px;">(3) the content of any supplemental media must relate directly to the objectives of the curriculum module in which it is used.</p>
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter D</b>	PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES	
<b>RULE §90.40</b>	PROGRAM CURRICULUM AND MATERIALS- ALL PROGRAMS	

<b>Discrimination Prohibited</b>		
<b>Title</b>	ECONOMIC REGULATION	A program provider or instructor must not discriminate against participants based on sex, race, religion, age, national or ethnic origin, or disability.
<b>Part 4</b>	TEXAS DEPARTMENT OF LICENSING AND REGULATION	
<b>Chapter 90</b>	COURT-ORDERED EDUCATION PROGRAMS	
<b>Subchapter E</b>	PROGRAM REQUIREMENTS – ADMINISTRATION & OTHER RESPONSIBILITIES	
<b>RULE §90.54</b>	DISCRIMINATION PROHIBITED	

### ***Texas Department of Licensing and Regulation (TDLR) Notes:***

*A licensed court ordered education provider or instructor may not disallow participation in a court ordered education program based upon a person’s national or ethnic origin. As such, there must be reasonable accommodations provided for equity of success for all student learners regardless of national or ethnic origin.*

*TDLR does not consider an interpreter who translates English into another language or who relays training content to participants in their native language as being an instructor. As such, the interpreter who translates the learning material into another language is not bound to obtain an instructor license to aid a TDLR licensed education provider, therefore are exempt from licensing regulations.*

*The responsibility for ensuring requirements for training online rest with the licensed court ordered education provider. It is their responsibility to ensure that all requirements are met which includes interpretation and translation services for those student learners who speak languages other than English.*

## Judicial Discretion

Judicial discretion, when allowed by legislation, “refers to a judge’s power to make decisions based on their individualized evaluation, guided by the principles of law.” In the punishment phase of a case, a judge can consider factors in order to formulate a sentence that is reasonable and appropriate for the case.<sup>12</sup>

When a judge is sentencing an individual in a DWI/DUI case, they may determine that the offender does not have access to court ordered alcohol education due to the fact that the course is not available in the language in which they best communicate. Therefore, the court has the authority not to include alcohol offender education in the sentencing.

## Engage Texas Department of Licensing & Regulation Management

As part of this investigation, the Manager of the Education and Examination Division of the Texas Department of Licensing and Regulation (TDLR), provided the following insight of TDLR’s administrative oversight of the court ordered education program.

TDLR recognizes that instructor and participant language barriers are a significant issue facing alcohol offender court ordered education.

- It is acknowledged that the judiciary may opt out of ordering the alcohol education course requirement because of the language barrier issues and the course efficacy limitations caused by the inability of the offender to effectively communicate using the language in which the course is delivered.

TDLR recognizes that the issue of language barriers between licensed providers, instructors, and participants is a statewide issue that is not unique to a particular jurisdiction.

- It is acknowledged that the curriculum and ancillary portions of the court ordered education programs need to be translated from English into other languages to be accessible to all offenders who are required to complete the course by statute.
  - TDLR does not have the fiscal or staff resources provided to them by the legislature to translate court ordered education programs into languages other than English and Spanish.
  - TDLR recognizes that an ordinal list of population critical languages should be translated first and that it cannot accommodate translation for all languages. The state’s approach should be based upon those population of persons and languages that have a higher probability of being reached.
  - TDLR does not have the funding to provide interpretation and translation services for court ordered education providers or instructors. This includes interpretation and translation services needed in traditional and web-based training platforms.

TDLR recommended that the courts work with TxDOT Traffic Safety Specialists to identify language translation banks or services that can provide interpretation and translation services for court ordered alcohol education courses.



- TDLR recommends that the courts create relationships with court ordered alcohol education providers and instructors to ensure that appropriate course set ups are in place that address language barrier issues before the course occurs.

## Potential Solutions to Address Language Barriers

### Modes of Instruction & Reasonable Accommodations

As part of this investigation, practical solutions were identified to address languages barrier issues related to court ordered alcohol education. There are various products and approaches available, however the potential solutions can be organized into three distinct groups.

Table 2. Types of Products to Address Language Barriers

Interpreter Based	<ul style="list-style-type: none"> <li>• A trained interpreter is present in the classroom (face-to-face or virtually).</li> <li>• At least one interpreter will be assigned to each language represented other than English.</li> <li>• The participant will listen to the interrupter using headphones.</li> <li>• Translation of written and/or visual materials would need to be in addition to the interpreter managing the verbal delivery.</li> <li>• May significantly impact the participant’s ability to engage in class activities.</li> </ul>
Personal Apps	<ul style="list-style-type: none"> <li>• Phone and/or laptop-based applications that interpret verbal communication for the individual user.</li> <li>• The participant listens to interrupter using headphones or reads on device screen.</li> <li>• Translation of written and/or visual materials would need to be in addition to the interpreter managing the verbal delivery.</li> <li>• May significantly impact the participant’s ability to engage in class activities.</li> </ul>
Translation	<ul style="list-style-type: none"> <li>• Curriculum would be provided in a translated format prepared in advance.</li> <li>• For video or virtual content, the verbal communication would be provided with closed caption in their language of choice.</li> <li>• Visual content and other course materials would be provided to the participant in their language of choice in a digital or paper format.</li> </ul>

## Investigate Options for Synchronous and Asynchronous On-Line or Virtual Delivery

The option of course delivery through a Learning Management System (LMS) was examined as part of this white paper. There are different ways and providers who can be engaged for this approach, but for the purpose of this investigation, we met with Dr. Janice Meyer, Director of Continuing & Professional Education at Texas A&M University to discuss the capabilities that their LMS, Canvas, could provide. The Canvas LMS platform is similar to other LMS, therefore it can provide a useful example for understanding how an LMS approach can be applied to learning.

There are two major types of virtual education deliver modes: Synchronous and Asynchronous.<sup>13</sup>

### Synchronous Courses

- Learning with others at the same time either in a face-to-face or virtual classroom environment.
- Difficult to communicate content in more than one language at a time. Those whose primary language is one other than English may have difficulty consuming the content and will likely not receive the intended benefit of the training.
- The instructor directly monitors attendance and engagement.
- Course completion is tracked by the instructor and/or training provider.

### Asynchronous Courses

- Learning is at the participants own pace using online resources (ex: video, slides, audio) provided to the participant through the learning management system (LMS).
- Time in content (minimum time spent on a section) can be included in course to match the classroom hour requirements.
- Digital resources allow for communication of content to be delivered in the language selected by the user.
- Attendance and engagement are monitored digitally through processes embedded in the course and LMS.
- Course completion is maintained by the LMS and is accessible by participant and other designated individuals for reporting purposes.
- Will require modifications to current TDLR policies to include administrative requirements specific to asynchronous course delivery.

There are a number of benefits associated with providing a LMS option for court ordered alcohol education training. Using a LMS approach would provide additional access for all participants especially those in more remote areas, limitations on scheduling due to work or personally responsibilities, and individuals who communicate best in a language other than English or Spanish.

Virtual training, both synchronous and asynchronous, has become an accepted mode of delivering academic, professional, compliance, and licensing type education especially in

light of Covid restrictions. If the goal is to make this training accessible and useful to an offender, thoughtful consideration should be given to alternative modes of content delivery.

### Variables Considered Related to Language Barrier Solutions

While examining different approaches to address the language barriers associated with the court ordered alcohol education courses, several specific variables were considered as part of the investigation.

- Flexibility – Ability to address the diversity of language needs and accessibility.
- Adaptability – Ease by which different language needs can be addressed.
- Financial Impact – Costs borne by the courts as well as offenders.
- Quality Control – Ability to ensure content is delivered accurately and consistently.
- State Requirements – Ability to meet all TDRL curriculum and other educational materials requirements.

The different types of translation/interpretation approaches are summarized in Table 3. Specific products are listed to give the reader an idea of the types of approaches that can be employed to address the language barrier challenges presented in court ordered alcohol education programs in Texas. It should be noted that English and Spanish versions of the courses are currently available in both classroom and online formats. Other languages are not currently available and the need for specific language translations/interpretations vary considerably across the state, therefore the state will need to address the need for adaptive and flexible formats for court ordered alcohol education as the state continues to become more diverse.

Table 3. Potential Solutions to Address Language Barriers in Court Ordered Alcohol Education

Product	Brief Description	Capabilities	Considerations/Potential Hurdles
ZipDX <sup>14</sup>	Platform for conducting multilingual virtual meeting that primarily targets professional (corporate, government, diplomatic) business meetings where accuracy & efficiency are of paramount importance. <sup>14</sup>	An interpreter is required for each language that is different from the presenter. If a session lasts more than 30 minutes, then the interpreters will need to change out thereby requiring more resources. <sup>14</sup>	<p>This approach addresses language access in general but would be burdensome in terms of staff &amp; financial resources as well as productivity. Would likely require individual courts and/or providers to contract/coordinate with the vendor.</p> <ul style="list-style-type: none"> <li>• Pricing based on length &amp; number of sessions along with the number of interpreters.<sup>14</sup></li> </ul>
Boostlingo + Voiceboxer <sup>15</sup>	Virtual event platform that offers simultaneous interpretation services to assist in reaching a target audience through any language translation.	<ul style="list-style-type: none"> <li>• Integration with Zoom, Microsoft Teams, &amp; other platforms.</li> <li>• Remote simultaneous interpretation (RSI) minimizes misinterpretations &amp; engages audience during sessions.</li> <li>• With RSI, participants can follow the translated visual presentation synchronized to the language of choice &amp; ask questions in that language.</li> </ul>	<ul style="list-style-type: none"> <li>• Robust workflow management of virtual interpretation resources.</li> <li>• Designed to facilitate language interpretation for virtual meetings &amp; events.</li> <li>• Would require individual courts and/or providers to contract/coordinate with the vendor.</li> <li>• Pricing based on length &amp; number of sessions along with the number of interpreters.</li> </ul>
Google Translate (App based approaches) <sup>16</sup>	Individuals engage with phone applications to translate verbal communication in real-time. Usually utilized in less formal conversation as opposed to classroom & meeting environments.	<ul style="list-style-type: none"> <li>• Individuals would be responsible for employing the app in the face-to-face learning environment. Interpretation success depends on audio quality.</li> <li>• Visual content not presented in participant's choice of language.</li> <li>• Instructor not aware of interpretation quality since it is processed through the participant's digital device.</li> </ul>	<ul style="list-style-type: none"> <li>• Translation apps are not meant for these types of educational applications although student choice to use them as an interpreter of last resort.</li> <li>• No way to assess a participant's engagement with the content. Limits classroom engagement.</li> <li>• May be challenging for some individuals who may have access limitations to this technology.</li> </ul>

Product	Brief Description	Capabilities	Considerations/Potential Hurdles
<p>Canvas Learning Management System (LMS)<sup>17</sup></p>	<p>Designed to deliver training online either synchronously or asynchronously. Provides a centralized platform to translate content efficiently. Includes extensive language options.</p> <p>Able to retain individual training records in a confidential, centralized database including completion, assessment, &amp; engagement data.</p>	<ul style="list-style-type: none"> <li>• Synchronous Delivery – real-time delivery with closed captioning in the participant’s choice of language.</li> <li>• Asynchronous Delivery – self-directed/paced delivery in the participant’s choice of language. This approach could include slide presentation participant’s choice of language with or without closed captioned voice over.</li> <li>• There is also an option for prerecorded video with closed captioning in the selected language.</li> </ul>	<ul style="list-style-type: none"> <li>• Canvas is a robust LMS platform that is used by many educational institutions for the delivery of academic &amp; continuing education courses</li> <li>• Option would require engagement with an institution to create/maintain the digital content based on the approved TDLR curriculum.</li> <li>• Courts would provide information on this option to offenders as an option. There would be no expense to the court since the individual would pay any fees in through the Canvas portal in the same manner as they do with face-to-face providers.</li> <li>• The Canvas LMS is currently deployed at Texas A&amp;M/TTI and accessible for continuing education.</li> </ul>

## Comparison of Potential Solutions for Address Language Barriers in Court Ordered Alcohol Education

The information presented in Table 3 highlights specific products that may help address language barriers issues experienced with court ordered alcohol education that are associated with DWI cases in Texas. Although these are products, the intent was to highlight potential solutions that are available to address court ordered education: interpretation verses translation.

- Interpretation is rendering a spoken language into another language while maintaining the meaning of the source content. Typically, the process is spoken and simultaneous to the original delivery of the content.
- Translation is the process of taking the content/text from one language to another while maintain the original meaning of the content. Captioning video or audio content is also considered translation.

There are pros and cons to each of these approaches. For the purposes of addressing the barriers associated with court ordered alcohol education in Texas, the main variables we need to consider are accessibility, quality/consistency of content as well as costs for offenders and courts.

## Summary & Recommendations

There are many variables to consider related to the most effective and efficient ways to ensure that court ordered alcohol education is accessible to those individuals who need it. Texas is and will continue to experience a large influx of people into the state to work and live. Based on census data, we know that a significant percentage of those people immigrating communicate best in a language other than English. Previously, it was assumed that delivering alcohol offender education in English or Spanish would suffice. However, in the recent decade, the language translation needs for offender education has become more diverse and is straining our communities' resources and court systems.

Because of the diversity of languages and the number of courts affected, there is no single solution that will address all of the challenges. However, the state can look toward different options that mitigate language barrier issues related to court ordered alcohol education.

Based on the variables identified in this white paper, it is recommended that: Texas A&M Transportation Institute and the Texas Statewide Impaired Driving Task Force work with the Texas Department of Licensing and Regulation and appropriate court/judicial associations to further assess the viability of developing a virtual solution to be housed on an accessible learning management platform to address the need for court ordered alcohol education content to be delivered to offenders in a diverse set of languages. The courses developed in languages other than English or Spanish will be prioritized by census data and input from judicial representatives in the State.

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