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SENATE BILL NO. 814

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 16, 2023)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 8.01-384.1 and 19.2-164.1 of the Code of Virginia, relating to interpreters for persons who are deaf or hard of hearing.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-384.1 and 19.2-164.1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-384.1. Interpreters for deaf or hard of hearing in civil proceedings.

In any civil proceeding in which a speech-impaired person or a person who is deaf or hard of hearing is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court shall appoint an interpreter for any speech-impaired person or person who is deaf or hard of hearing who requests this assistance.

Interpreters for the deaf and hard of hearing in these proceedings shall be procured through the Department for the Deaf and Hard-of-Hearing; *if the Department cannot procure such services, then the court may appoint a readily available interpreter with full certification from the Registry of Interpreters for the Deaf, Inc., or an equivalent national certification. Such court-appointed interpreter's qualifications are subject to review and approval by the Department for the Deaf and Hard-of-Hearing.*

Any person who is eligible for an interpreter pursuant to this section may waive the use of an interpreter appointed by the court for all or a portion of the proceedings. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The compensation of interpreters appointed pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury or may, in the discretion of the court, be assessed as a part of the cost of the proceedings.

The provisions of this section shall apply in both circuit courts and district courts.

§ 19.2-164.1. Interpreters for the deaf (Supreme Court Rule 2:507 derived in part from this section).

In any criminal case in which a deaf person is the accused, an interpreter for the deaf person shall be appointed. In any criminal case in which a deaf person is the victim or a witness, an interpreter for the deaf person shall be appointed by the court in which the case is to be heard unless the court finds that the deaf person does not require the services of a court-appointed interpreter and the deaf person waives his rights. Such interpreter shall be procured by the judge of the court in which the case is to be heard through the Department for the Deaf and Hard-of-Hearing.

The compensation of an interpreter appointed by the court pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs; *if the Department cannot procure such services, then the court may appoint a readily available interpreter with full certification from the Registry of Interpreters for the Deaf, Inc., or an equivalent national certification. Such court-appointed interpreter's qualifications are subject to review and approval by the Department for the Deaf and Hard-of-Hearing.*

Any person entitled to the services of an interpreter under this section may waive these services for all or a portion of the proceedings. Such a waiver shall be made by the person upon the record after an opportunity to consult with legal counsel. A judicial officer, utilizing an interpreter obtained in accordance with this section, shall explain to the deaf person the nature and effect of any waiver. Any waiver shall be approved in writing by the deaf person's legal counsel. If the person does not have legal counsel, approval shall be made in writing by a judicial officer. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The provisions of this section shall apply in both circuit courts and district courts.

Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf person and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings.