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SENATE BILL NO. 885

Offered January 20, 1995

A BILL to amend and reenact §§ 19.2-164 and 19.2-164.1 of the Code of Virginia, relating to interpreters in criminal proceedings.

Patrons—Calhoun, Howell, Lucas and Woods; Delegates: Darner, Mayer, Tata and Van Landingham

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-164 and 19.2-164.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-164. Interpreters for non-English-speaking persons.

In any criminal case in which a non-English-speaking person is the accused, an interpreter for the non-English-speaking person shall be appointed. In any criminal case in which a non-English-speaking person is the victim, an interpreter shall be appointed by the judge of the court in which the case is to be heard upon the request of the attorney for the Commonwealth and upon a showing of good cause.

An English-speaking person fluent in the language of the country of the accused or the language of the country of the victim shall be appointed by the judge of the court in which the case is to be heard, unless the accused or the victim shall obtain an interpreter of his own choosing who is approved by the court as being competent. In either event the compensation of such interpreter shall be fixed by the court and shall be 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. 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. The provisions of this section shall apply in both circuit courts and district courts.

§ 19.2-164.1. Interpreters for the deaf.

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, an interpreter for the deaf person shall be appointed upon the request of the attorney for the Commonwealth and a showing of good cause. 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 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.

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.

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