

1 IN THE SENATE

BY DUNCAN, STURGULEWSKI
AND KERTTULA

2

SENATE BILL NO. 52

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the use of interpreters in crimi-
7 nal proceedings and in official proceedings of state
8 agencies; and amending Rule 604 of the Alaska Rules
9 of Evidence."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 12.80 is amended by adding a new section to read:

12 Sec. 12.80.060. RIGHT TO AN INTERPRETER. (a) A person who
13 cannot readily understand or communicate the spoken English language
14 who is charged with or convicted of a crime has a right to the servi-
15 ces of a qualified interpreter to assist

16 (1) in the person's defense throughout proceedings under
17 this title; and

18 (2) in the completion of documents required by or related
19 to proceedings under this title.

20 (b) When a person who is charged with or convicted of a crime
21 represents to a court an inability to understand or communicate the
22 spoken English language, or to read and understand documents that the
23 person is required to sign, in the absence of a waiver provided by the
24 person, the court shall appoint a qualified interpreter to assist the
25 person throughout the proceedings.

26 (c) When a witness in a proceeding under this title does not
27 understand and speak the English language, the court shall appoint a
28 qualified interpreter to interpret for the witness.

29 (d) The person accused of a crime may waive the right granted

1 under (a) of this section only if

2 (1) the court obtains a written waiver from the person;

3 (2) counsel, if any, consents; and

4 (3) the court determines that the waiver has been made
5 knowingly, voluntarily, and intelligently.

6 (e) The cost of providing the interpreter shall be borne accord-
7 ing to applicable court rule.

8 (f) A qualified interpreter may not, without the written consent
9 of the parties to the communication, be examined about

10 (1) any communication the interpreter interprets under
11 circumstances in which the communication is privileged; or

12 (2) any information the interpreter obtains while inter-
13 preting pertaining to any proceeding then pending.

14 (g) In this section, "qualified interpreter" means a person who
15 is readily able to interpret spoken and translate written English to
16 and for the person charged with the crime and to interpret or trans-
17 late statements by the person into English, and who is not otherwise
18 disqualified because of lack of impartiality.

19 * Sec. 2. AS 44.99 is amended by adding a new section to read:

20 Sec. 44.99.020. RIGHT TO AN INTERPRETER. (a) A person who
21 cannot readily understand or communicate the spoken English language
22 has a right to the services of a qualified interpreter to assist the
23 person throughout an official proceeding and to complete documents
24 required by or related to that proceeding.

25 (b) When a person who is a party in an official proceeding
26 represents to the presiding officer at an official proceeding an
27 inability to understand or communicate the spoken English language, or
28 to read and understand a document that the person is required to sign,
29 in the absence of a waiver provided by the person, the presiding

1 officer at the official proceeding shall appoint a qualified inter-
2 preter to assist the person throughout that proceeding.

3 (c) When a witness in an official proceeding does not understand
4 or speak the English language, the presiding officer at that proceed-
5 ing shall appoint a qualified interpreter to interpret for the wit-
6 ness. If the proceeding is not under oath, the presiding officer
7 shall allow a qualified interpreter to interpret for the witness.

8 (d) The presiding officer at an official proceeding may inquire
9 into the qualifications of a person who is to serve as an interpreter
10 and make a preliminary determination that the interpreter is able, in
11 the proceeding, to interpret accurately all communication to and from
12 the person or witness who requires the interpreter's services. The
13 determination must be based on the interpreter's

14 (1) education, certification, and experience in interpret-
15 ing in similar proceedings;

16 (2) understanding of the basic vocabulary of the languages
17 for which interpretation is required;

18 (3) understanding of the proceeding in which the inter-
19 preter is to participate; and

20 (4) impartiality.

21 (e) In the preliminary determination under (d) of this section,
22 a party or the party's representative may question the interpreter
23 about the interpreter's qualifications and impartiality.

24 (f) A person may not serve as an interpreter under this section
25 if the person

26 (1) is an employee of an agency that is a party in the
27 proceeding; or

28 (2) would serve both by appointment under (b) of this sec-
29 tion and as an interpreter sworn or allowed to serve under (c) of this

1 section.

2 (g) If the official proceeding is conducted under oath, a qual-
3 ified interpreter appointed under this section shall, before commenc-
4 ing upon the duties of an interpreter, take an oath that a true inter-
5 pretation will be made to the person being examined of all the offi-
6 cial proceedings in a language that the person understands, and that
7 the interpreter will repeat the statements of the person being ex-
8 amined to the persons conducting and participating in the proceeding
9 in the English language, to the best of the interpreter's skill and
10 judgment.

11 (h) A person may waive the right given in (a) of this section
12 only if

13 (1) the person executes a written waiver;

14 (2) counsel, if any, consents; and

15 (3) the presiding officer at the official proceeding deter-
16 mines that the waiver has been made knowingly, voluntarily, and intel-
17 ligently.

18 (i) An interpreter appointed or allowed to serve under this
19 section shall be adequately compensated for the services that the
20 interpreter performs and shall be reimbursed for standby time and
21 actual travel-related expenses. If the interpreter is appointed under
22 (b) of this section, the cost of providing the interpreter shall be
23 borne by the state. If the interpreter is appointed or allowed to
24 serve under (c) of this section, the cost of providing the interpreter
25 shall be borne by the party offering the witness.

26 (j) In this section

27 (1) "official proceeding" means a proceeding brought by or
28 against a state agency and heard before an administrative body or
29 official, including a proceeding under the Administrative Procedure

1 Act (AS 44.62);

2 (2) "qualified interpreter" means a person not disqualified
3 by (f) of this section, who is not otherwise disqualified because of
4 lack of impartiality, and who is readily able to interpret spoken and
5 translate written English to and for a party or witness in an official
6 proceeding and to interpret or translate statements by the party or
7 witness into English;

8 (3) "state agency" means a state administrative body,
9 board, commission, committee, subcommittee, authority, council, agen-
10 cy, or other organization, including subordinate units of these
11 groups, supported in whole or in part by state money or authorized to
12 spend state money.

13 * Sec. 3. AS 12.80.060(g), added by sec. 1 of this Act, has the effect
14 of amending Rule 604 of the Alaska Rules of Evidence by substituting
15 specific requirements for qualification as an interpreter in place of
16 qualification of the interpreter as an expert.