

S B

52

Alaska State Legislature



SENATOR JIM DUNCAN

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(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR —
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

MEMORANDUM

FEBRUARY 16, 1989

TO: SENATOR JAN FAIKS, CHAIR
SENATE JUDICIARY COMMITTEE

FROM: SENATOR JIM DUNCAN

SUBJECT: SENATE BILL 52, AN ACT RELATING TO THE USE OF
INTERPRETERS IN CRIMINAL PROCEEDINGS AND IN OFFICIAL
PROCEEDINGS OF STATE AGENCIES; AND AMENDING RULE 604 OF
THE ALASKA RULES OF EVIDENCE.

I REQUEST THAT YOU SCHEDULE SB 52, RELATING TO USE OF INTERPRETERS IN CRIMINAL PROCEEDINGS AND IN OFFICIAL PROCEEDINGS OF STATE AGENCIES, FOR A HEARING BY THE SENATE JUDICIARY COMMITTEE AS SOON AS POSSIBLE.

SENATE BILL 52 WILL FORMALIZE AND CLARIFY THE RIGHT TO AN INTERPRETER IN OFFICIAL PROCEEDINGS FOR PERSONS WHO CANNOT READILY UNDERSTAND OR COMMUNICATE IN SPOKEN ENGLISH. PRESENTLY NON-ENGLISH SPEAKING PERSONS ARE ENTITLED TO AN INTERPRETER IN COURT PROCEEDINGS; HOWEVER, IT CAME TO MY ATTENTION IN 1988 THAT SOMETIMES OUR COURT RULES ALLOWED HIRING OF POTENTIALLY BIASED INTERPRETERS. IN ONE LOCAL CASE A PERSON WAS RETAINED BY THE COURT SYSTEM AS AN INTERPRETER FOR A RELATIVE, AND IT WAS LATER FOUND THAT THE INTERPRETER HAD A STAKE IN A NEGATIVE OUTCOME FOR THE DEFENDANT.

IN ADDITION TO CRIMINAL PROCEEDINGS, SENATE BILL 52 WILL ESTABLISH THE RIGHT OF NON-ENGLISH SPEAKING PERSONS TO INTERPRETERS IN ADMINISTRATIVE HEARINGS BEFORE STATE AGENCIES. THIS MEANS THAT IF A PERSON WHO IS ENGLISH IMPAIRED OR DEAF IS REQUIRED TO APPEAR BY A STATE AGENCY THAT AGENCY MUST PROVIDE AN INTERPRETER IF DESIRED BY THE IMPAIRED PERSON. IN THE SAME CASE I MENTIONED ABOVE, THE NON-ENGLISH SPEAKING PERSON GAVE UP THE RIGHT TO A PAROLE HEARING WITHOUT KNOWING WHAT HE WAS GIVING UP.

THE COURT SYSTEM HAS BEEN VERY HELPFUL IN WORK ON THIS BILL AND AS A RESULT HAS PROPOSED CHANGES TO THE COURT RULE WHICH WILL ADDRESS THE USE OF INTERPRETERS IN THE COURT ROOM. I HAVE ATTACHED A PROPOSED COMMITTEE SUBSTITUTE WHICH INCORPORATES CHANGES RECOMMENDED BY THE COURT SYSTEM.

ATTACHMENTS

state with the words "Seal of the District Court of the State of Alaska" and a designation of the district surrounding the vignette.

(d) **Seal of the Consolidated Trial Courts.** In those court locations where the superior and district courts have been consolidated for administration and when ordered by the presiding judge of the district, the seal for the superior and district courts is a vignette of the official flag of the state with the words "Seal of the Trial Courts of the State of Alaska" and a designation of the district surrounding the vignette.

(e) **Possession of Seals.** The clerk of the court, or if there is no clerk, the judge or magistrate, shall keep possession of the seal of the court.

Amended by SCO 443 effective November 13, 1980

Rule 5. Disposal of Money Paid to or Deposited With the Court.

(a) The administrative director shall designate, in accordance with written procedures established by him, the banking institutions to serve as depositories for all monies paid to, or deposited with, the courts. Certain accounts in the designated banks shall be the depositories for trust funds held by the various courts. Monies may be withdrawn from the accounts in accordance with procedures established by the administrative director.

(b) The proceeds of all fees, forfeitures, penalties and all other monies (except trust funds) collected by or deposited with the courts shall be deposited in the appropriate bank account for transfer to the general fund of the state in accordance with procedures established by the administrative director.

* **Rule 6. Fees of Interpreters and Translators.**

(a) **Amount.** The fee for an interpreter or translator for attendance in any court or at a coroner's inquest shall be set by that court. The fee shall be subject to the following limitations:

(1) For time spent in actual performance of interpreter or translator services during the proceedings, the fee shall not exceed \$30.00 per hour; and

(2) For standby time during which the interpreter or translator is required by the court to be in attendance at the court facility, the fee shall not exceed \$15.00 per hour.

The court shall not authorize the maximum hourly rate unless the interpreter or translator has had formal training in court interpreting or has demonstrated specialized language skills beyond mere bilingual ability.

(b) **Payment.** Interpreters and translators must be approved by the court pursuant to Evidence Rule 604. Interpreters and translators will be provided and their fees paid:

(1) by the court in coroner's inquests and presumptive death hearings;

(2) in civil and criminal cases, by the party who requires translation or interpretation to understand the proceedings or who calls a witness whose testimony must be translated or interpreted. These costs may be taxed and collected in civil cases as other costs, except as provided in subparagraph (3) below; and

(3) in civil and criminal cases where a party is deaf, mute, or otherwise unable to effectively communicate because of a physical disability, the fee for necessary in-court services of an interpreter or translator shall be paid by the court, subject to the limitations of paragraph (a) of this rule; however, if the court in a civil case finds that a party has made a frivolous claim or defense, or otherwise litigated in bad faith, the court shall order that party to pay the fees of any interpreter or translator required by any party to the case.

(Amended by SCO 469 effective June 1, 1981; and by SCO 816 effective August 1, 1987)

Annotations

Cases

(b), (d) *Accounting Instructions, Superior Courts, 1959, Office of Admin. Director.*

(b) *Supreme Court Order No. 11 (Clerk of Supreme Court to Establish Bank Accounts)*

(c), (d) *Accounting Instructions, District and Deputy Magistrates, 1959, Office of Admin. Director.*

Admin. Director Instruction 60-1 (Supplementary Instructions, Trust Funds)

(d) *Admin. Director Instruction 60-12 (Unearned Docket or Filing Fees); 60-13 (Fines Levied Before Transition— Collected After Transition); 60-4 (Accounting Instructions for Payment of Jurors and Witness Fees, and Expenses by State of Alaska Field Warrants).*

Admin. Office Bulletin 62-1 (Examination of Accounting Records and Proceedings)

Rule 7. Witness Fees.

(a) **Amount.** A witness attending before any court, referee, master, grand jury or coroner's jury or upon a deposition in a discovery proceeding, whose testimony is necessary and material to the action, shall receive a witness fee of \$12.50 if such attendance, including the time necessarily occupied in traveling from his residence to the place of his attendance and returning from that place, requires not more than three consecutive hours. If such attendance requires more than three consecutive hours, the witness shall receive a witness fee of \$25.00 for each day of attendance. Any witness who attends at a

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 959

Amending Evidence Rule 604
concerning interpreters.

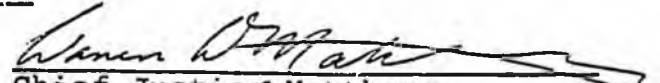
IT IS ORDERED:

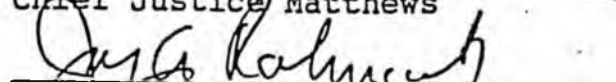
Evidence Rule 604 is amended to provide:

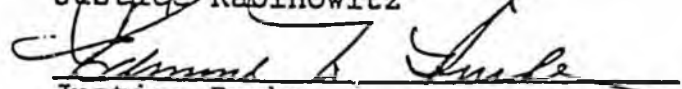
An interpreter is subject to the provisions of these rules relating to qualifications as an expert and to the administration of an oath or affirmation that the interpreter will make a true translation of all communications to and from the person for whom the interpretation is made. In determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality. Parties to the proceedings may also question the interpreter concerning the interpreter's qualifications and impartiality.

DATED: March 30, 1989

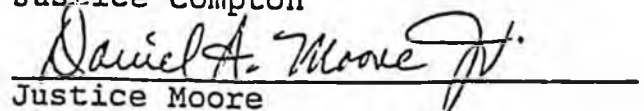
EFFECTIVE DATE: July 15, 1989


Chief Justice Matthews


Justice Rabinowitz


Justice Burke

Justice Compton


Justice Moore

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 959

Amending Evidence Rule 604
concerning interpreters.

IT IS ORDERED:

Evidence Rule 604 is amended to provide:

An interpreter is subject to the provisions of these rules relating to qualifications as an expert and to the administration of an oath or affirmation that the interpreter [HE] will make a true translation of all communications to and from the person for whom the interpretation is made. In determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality. Parties to the proceedings may also question the interpreter concerning the interpreter's qualifications and impartiality.

DATED: March 30, 1989

EFFECTIVE DATE: July 15, 1989

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore

PROPOSED AMENDMENT TO EVIDENCE RULE 604
CONCERNING INTERPRETERS

(New language underlined

Deleted language capitalized and in brackets)

Rule 604. Interpreters.

An interpreter is subject to the provisions of these rules relating to qualifications as an expert and to the administration of an oath or affirmation that the interpreter [HE] will make a true translation of all communications to and from the impaired person. In determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality. Parties to the proceedings may also question the interpreter concerning the interpreter's qualifications and impartiality.

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

NOTES TO DECISIONS

Quoted in Brookwood Area Home- age, Sup. Ct. Op. No. 2953 (File Nos. owners Ass'n v. Municipality of Anchor- S-575, S-629), 702 P.2d 1317 (1985).

Article 7. Legislative Review of Rules.

Sec. 44.62.320. Legislative annulment of regulations and review.

Editor's notes. — The Alaska Const., art. II, § 22 amendment proposal that was mentioned in the notes to decisions was defeated in the November, 1984 election.

Article 8. Administrative Adjudication.

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| <p>Section 330. Application of AS 44.62.330 — 44.62.630</p> | <p>Section 410. Time and place of hearing 600. Voting procedure</p> |
|--|--|

Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630.

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indi-

cated, the procedure that shall be conducted under AS 44.62.330 — 44.62.630 is limited to named functions of the agency.

(1) *[Repealed, § 5 ch 159 SLA 1980.]*

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects, Engineers and Land Surveyors

(5) *[Repealed, § 13 ch 218 SLA 1976.]*

(6) Board of Examiners in Optometry

(7) *[Repealed, § 5 ch 159 SLA 1980.]*

(8) State Medical Board

(9) Division of Lands under Alaska Land Act where applicable

(10) Board of Nursing

(11) Board of Pharmacy

(12) Board of Public Accountancy

(13) Department of Labor as to functions relating to employment security only as provided in (c) of this section

(14) Real Estate Commission

(15) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act

(16) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications

(17) *[Repealed, § 12 ch 131 SLA 1980.]*

(18) *[Repealed, § 49 ch 94 SLA 1980.]*

(19) *[Repealed, § 54 ch 169 SLA 1978.]*

(20) *[Repealed, § 16 ch 82 SLA 1982.]*

(21) *[Repealed, § 54 ch 169 SLA 1978.]*

(22) *[Repealed, § 11 ch 181 SLA 1976.]*

(23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 — 18.65.490

(24) Department of Health and Social Services, under AS 47.35, relating to boarding and foster homes for children

(25) *[Repealed, § 60 ch 98 SLA 1966.]*

(26) *[Repealed, § 4 ch 120 SLA 1971.]*

(27) Department of Health and Social Services and Department of Environmental Conservation under Alaska Food, Drug, and Cosmetic Act (AS 17.20), and Department of Commerce and Economic Development in connection with the licensing of embalmers and funeral directors under AS 08.42.

(28) Department of Health and Social Services and the Hospital Advisory Council, under AS 18.20.010 — 18.20.130

(29) *[Repealed, § 4 ch 120 SLA 1971.]*

(30) Department of Environmental Conservation, under AS 18.35.010 — 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels

- (31) *[Repealed, § 40 ch 206 SLA 1975.]*
 - (32) *[Repealed, § 4 ch 106 SLA 1970.]*
 - (33) Board of Marine Pilots
 - (34) Alaska Police Standards Council
 - (35) Guide Licensing and Control Board
 - (36) Board of Dispensing Opticians
 - (37) *[Repealed, § 20 ch 110 SLA 1981.]*
 - (38) *[Expired pursuant to § 3 ch 128 SLA 1974; am § 7 ch 108 SLA 1975.]*
 - (39) Alaska Public Offices Commission
 - (40) Board of Fisheries
 - (41) Board of Game
 - (42) the Department of Education and the Professional Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 — 14.20.040 and AS 14.20.470(a)(4)
 - (43) Alaska Commission on Postsecondary Education under AS 14.48 as to denial of applications and revocation of authorizations and permits
 - (44) Department of Environmental Conservation, except to the extent that AS 44.62.360 — 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03
 - (45) University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40
 - (46) *[Repealed, § 77 ch 14 SLA 1987.]*
 - (47) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)
 - (48) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.870
 - (49) Board of Veterinary Examiners (AS 08.98.010)
 - (50) Board of Nursing Home Administrators (AS 08.70.010)
 - (51) Board of Barbers and Hairdressers (AS 08.13.010)
 - (52) Department of Natural Resources concerning the Alaska grain reserve program (AS 03.12).
 - (53) Department of Commerce and Economic Development concerning the licensing and regulation of audiologists (AS 08.11);
 - (54) Department of Commerce and Economic Development concerning the licensing and regulation of hearing aid dealers (AS 08.55).
- (b) The procedure of an agency not listed in (a) of this section shall be conducted under AS 44.62.330 — 44.62.630 only as to those functions to which AS 44.62.330 — 44.62.630 are made applicable by the statutes relating to that agency.
- (c) Judicial review and scope of judicial review of all final decisions of the commissioner of labor on an appeal relating to employment security shall be in accord with AS 44.62.010 — 44.62.650 notwithstanding anything to the contrary in the Alaska Employment Secu-

rity Act (AS 23.20). All other procedures of the Department of Labor relating to employment security shall be as provided in the Alaska Employment Security Act and the regulations under the Alaska Employment Security Act.

(d) Except in a case of reinstatement or reduction of penalty, the provisions of this chapter do not affect statutory provisions concerning

(1) civil or criminal penalties;

(2) additional relief by injunction or restraining order;

(3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;

(4) related matters which in their context do not relate to procedure. (§ 2 (ch 2) ch 143 SLA 1959; am § 14 ch 2 SLA 1964; am § 60 ch 98 SLA 1966; am § 2 ch 120 SLA 1966; am § 1 ch 58 SLA 1967; am § 18 ch 143 SLA 1968; am § 2 ch 83 SLA 1969; am § 2 ch 118 SLA 1969; am §§ 3, 4 ch 106 SLA 1970; am § 6 ch 104 SLA 1971; am § 4 ch 120 SLA 1971; am § 2 ch 178 SLA 1972; am § 5 ch 179 SLA 1972; am § 2 ch 17 SLA 1973; am § 3 ch 45 SLA 1973; am § 2 ch 82 SLA 1973; am § 2 ch 7 FSSLA 1973; am § 5 ch 76 SLA 1974; am § 2 ch 128 SLA 1974; am § 6 ch 9 SLA 1975; am § 25 ch 25 SLA 1975; am §§ 39, 40 ch 206 SLA 1975; am § 4 ch 25 SLA 1976; am § 2 ch 59 SLA 1976; am § 11 ch 181 SLA 1976; am §§ 13, 106 ch 218 SLA 1976; am § 18 ch 220 SLA 1976; am § 9 ch 46 SLA 1977; am § 3 ch 140 SLA 1977; am § 54 ch 169 SLA 1978; am § 10 ch 59 SLA 1979; am § 23 ch 58 SLA 1980; am § 3 ch 84 SLA 1980; am §§ 49, 60 ch 94 SLA 1980; am § 15 ch 130 SLA 1980; am § 12 ch 131 SLA 1980; am § 15 ch 141 SLA 1980; am §§ 4, 5 ch 159 SLA 1980; am § 20 ch 110 SLA 1981; am E.O. No. 51, §§ 38, 39 (1981); am § 16 ch 82 SLA 1982; am § 2 ch 100 SLA 1983; am § 124 ch 6 SLA 1984; am § 11 ch 131 SLA 1986; am § 77 ch 14 SLA 1987)

Effect of amendments. — The 1986 amendment added paragraphs (53) and (54) of subsection (a).

The 1987 amendment repealed subsec-

tion (a)(46), which read "Department of Commerce and Economic Development concerning the fishery enhancement loan program (AS 16.10.500 — 16.10.620)."

NOTES TO DECISIONS

Cited in *Kenai Peninsula Borough v. State, Dep't of Community & Regional Af-*

fairs, Sup. Ct. Op. No. 3277 (File No. S-1785), P.2d (1988).

Sec. 44.62.410. Time and place of hearing. (a) The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Southeastern Senate District; in Anchorage if the transaction occurred or the respondent

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 2, 1989

SUBJECT: CSSB 52 () - sectional analysis
TO: Senator Jim Duncan
FROM: Jack Chenoweth
Legislative Counsel

This memorandum accompanies the blank-sponsor CSSB 52 (), relating to provision of interpreters during criminal and administrative proceedings. Section 1 of the bill treats with criminal proceedings in the judicial branch; section 2 addresses administrative proceedings in the executive branch.

*

Proposed AS 12.80.060(a) defines a person's right to an interpreter in criminal proceedings. The threshold requires that the defendant "not readily understand or communicate" spoken English. It establishes that person's right to claim the services of an interpreter in his or her defense throughout the proceedings and in the preparation and completion of any related documents.

Proposed AS 12.80.060(b) prescribes the manner in which the person who may qualify under (a) of this section may assert the right to an interpreter, and directs the court to appoint a qualified interpreter to assist the person.

Subsection (c) of proposed AS 12.80.060 extends a comparable right to an interpreter to a person who is a witness in a criminal proceeding.

Proposed AS 12.80.060(d) establishes the circumstances under which a defendant qualifying for interpreter services under (a) of the section may waive that right; all three circumstances--a written waiver, consent of counsel, and court confirmation of the waiver--must be met.

Proposed AS 12.80.060(e) assigns the costs of interpreter services to the Alaska Court System.

Subsection (f) of proposed AS 12.80.060 establishes privileges against questioning the interpreter as to communication or information obtained by the interpreter during provision of interpreter services.

*

Proposed AS 44.99.020 adds substantially similar provisions for administrative proceedings or, in the language of the statute, "official proceedings."

Subsection (a) of that section defines the right to an interpreter for "a person who is a party or witness in an official proceeding." The threshold requirement is that the person "not readily understand or communicate the spoken English language." The scope of the right is similar to that provided to defendants in criminal proceedings.

Proposed AS 44.99.020(b) defines the manner in which the person who may qualify as a party under (a) may assert the right to an interpreter, and directs the presiding officer responsible for the official proceeding to appoint a qualified interpreter to assist the person throughout the proceeding.

Proposed AS 44.99.020(c) defines the manner in which the person who may qualify as a witness under (a) may assert the right to an interpreter, and directs how interpreter services are to be provided to these persons under alternative situations.

Subsection (d) of proposed AS 44.99.020 prescribes the factors which the presiding officer is to apply to determine whether the prospective interpreter has the essential qualifications to provide the service.

Proposed AS 44.99.020(e) authorizes the presiding officer to question the prospective interpreter about that person's qualifications and impartiality.

Proposed AS 44.99.020(f) identifies persons who may not serve as interpreters.

Senator Jim Duncan
Page 3
March 2, 1989

Proposed AS 44.99.020(g) authorizes the giving of an oath to an interpreter in official proceedings that are conducted under oath.

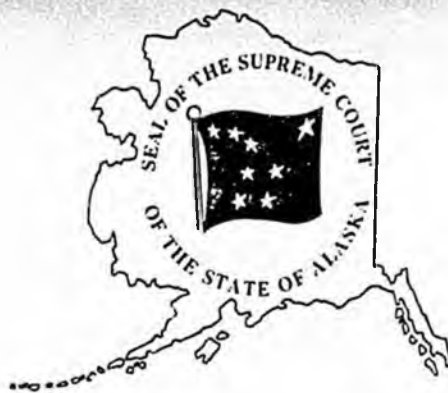
Subsection (h) of proposed AS 44.99.020 establishes the circumstances under which a person qualifying for interpreter services under subsection (a) may waive the right.

Proposed AS 44.99.020(i) prescribes the burden of payment for interpreter services. The state is to pay the cost of services required by (b) of this section, while the party calling the witness who may claim the right under (c) of this section is to pay the cost of that service.

Finally, pertinent definitions for key terms used in the section are set out in proposed AS 44.99.020(j).

JBC:kb
wkk2/084

Enclosure



RECEIVED JAN 30 1989

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

January 27, 1989

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

Roxanne Stewart
Senator Duncan's Aide
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 52

Dear Roxanne:

In reviewing the most recent draft of SB 52, Bill Cotton, our court rules attorney, found two problems with section 2 of the bill. First, section (a) states that a person has a right to an interpreter throughout an official proceeding. However, the right is not limited to parties or even to witnesses. It probably was not intended to apply to spectators, but could be so construed.

Second, an interpreter will be appointed for any party who needs one in an administrative proceeding involving a state agency. Thus, a plaintiff who sues a state agency and who needs an interpreter would not have to get the interpreter him or herself. Rather, the presiding official would do this. Paragraph (i) requires the cost to be borne by the state even if the party has adequate financial resources. This cost could be substantial because interpreters often must be flown in and paragraph (i) requires compensation for "standby time" and travel expenses.

I hope these comments will be helpful. Please call me if you have any questions.

Sincerely,

Janalee R. Strandberg
Staff Counsel

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

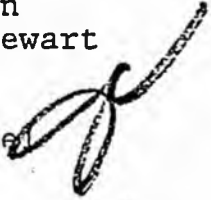
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1989

SUBJECT: Senate Bill 52: Alaska Court System comments

TO: Senator Jim Duncan
ATTN: Roxanne Stewart

FROM: Jack Chenoweth
Legislative Counsel 

Court System Staff Counsel Janalee Strandberg has offered comments with reference to section 2 of the Senate Bill 52, relating to interpreters in certain proceedings. Section 2 is, as her letter notes, applicable to proceedings involving executive branch agencies rather than the court system itself. Both objections are pre-eminently policy decisions.

If you agree with the first objection, we could narrow the applicability of the right that may be exercised. You may consider replacing "A person . . ." (page 2, line 20) with "A person who is a party or a witness in an official proceeding . . ." or comparable language.

As to the second objection, I have trouble understanding the assertion that this would cover "a plaintiff who sues a state agency." Litigation is a judicial matter, not covered under bill section 2. Still the sense of the objection--that a person who brings a proceeding against the state ought to carry the expense of an interpreter--deserves some further thought. I'm not sure that citizen initiation of an administrative proceeding against the state occurs very often, so distinguishing those situations and not extending the right to an interpreter to them may not be a significant loss. If you agree that the right to an interpreter should run only as to persons who are party-defendants in administrative proceedings initiated by the state (as distinguished from party-plaintiffs or party-petitioners in proceedings initiated against the state), we could, of course, narrow this section's applicability by making that distinction. Alternatively, we could limit the applicability of the provision to proceedings brought under the Admin-

Senator Jim Duncan
Page 2
February 6, 1989

istrative Procedure Act, though that would probably eliminate application of this section's provisions in welfare- and other human services-related proceedings--often conducted outside the Administrative Procedure Act--where use of interpreters would be more critical.

I would be reluctant to make the expense of the use of a interpreter in conjunction with a witness in an administrative proceeding. In virtually all situations, it seems to me, the state, not the party-opponent, is in a better position to bear the cost. Until there is some evidence of abuse of the right to an interpreter, I'd be inclined to spread the burden over all state taxpayers rather than require the party to bear the burden.

JC:gc
WKG6/089

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
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907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 23, 1987

SUBJECT: Defendant's right to an interpreter in a
criminal proceeding (Work Order 15-1452)

TO: Senator Jim Duncan
ATTN: Roxanne Stewart

FROM: Jack Chenoweth
Legislative Counsel

I

There is no explicit constitutional right by which a person accused of a crime is guaranteed the services of an interpreter or translator in the course of criminal proceedings, either under the federal or Alaska constitutions. In a small number of jurisdictions, however, the right is specifically provided for in a state's constitution.

That is not to say that an accused in a criminal proceeding is so unfamiliar with the English language that he or she cannot communicate statements or testimony, or cannot understand statements or testimony of others involved in the proceedings, is entirely without rights. Case decisions in other jurisdictions that have considered the question have concluded that an accused is entitled, as a matter of right, to be furnished the assistance of an interpreter in these circumstances. The accused's right to the services of an interpreter or translator in these circumstances has been grounded either on constitutional provisions of due process (that is, the right to participate effectively in the course of criminal proceedings by means of an interpreter) or, alternatively, the right of confrontation.

Since, in virtually all jurisdictions except those noted below, there is no absolute right to have court proceedings interpreted, and the constitutional right to confrontation may be met when the accused's legal counsel understands the testimony, either in the language used by witnesses or by translation into English, appointment of an interpreter or

translator for a person accused is a matter resting in the discretion of the trial court. As a general rule, appellate courts will look to determine whether the trial court made an informed determination as to the necessity of appointing an interpreter for the accused. That review will almost always focus, first, on whether the accused has made a timely request for the services of an interpreter and, then, on whether or not the accused was sufficiently conversant with English to understand and be understood in the course of the proceedings. An accused is not entitled to the services of an interpreter simply because he or she is not fluent in English, so long as the accused can understand and be understood in the language.

Finally, the same principle is applicable to the testimony of witnesses who speak imperfect English. The rule, generally, is that, if the witness can be understood, the accused is not entitled to have the witnesses's testimony given through or with the aid of an interpreter.

II

The law in Alaska follows the summary set out above. In Alaska, a trial judge has discretion to determine the circumstances in which an interpreter's services must be provided. In the only Alaska Supreme Court providing guidance on the subject, a 1963 matter decided before the current court administrative and evidence rules took effect, the court determined that a defendant was not entitled to the services of an interpreter to assist him to understand the responses to questions by the complaining witness:

We hold that no error was committed [in not requiring an interpreter]. No request was made by appellant that an interpreter be provided nor did he object to the testimony. That [the complaining witness], a Korean of three years' residence in the United States, spoke broken English is evident from the transcript. Yet it is also quite evident from the transcript . . . that she understood the questions and gave intelligent responsive answers.

Qualls v. City of Anchorage, 378 P.2d 405, 406 (1963).

In Alaska, a party's right to an interpreter or translator is further defined by court rule. Current court rules allow a party to use a qualified interpreter or translator in situa-

tions as may be warranted. However, the party dependent on the interpreter or translator must bear the cost of the service. Rule 6(b) of the Rules of Administration applicable in all state courts provides, in pertinent part:

PAYMENT. Interpreters and translators must be approved by the court pursuant to Evidence Rule 604 [prescribing requirements of qualification of an interpreter as an expert and use of an interpreter's services under oath]. Interpreters and translators will be provided and their fees paid:

(1) by the court in coroner's inquests and presumptive death hearings;

(2) in civil and criminal cases, by the party who requires translation or interpretation to understand the proceedings or who calls a witness whose testimony must be translated or interpreted.

(3) in civil and criminal cases where a party is deaf, mute, or otherwise unable to effectively communicate because of a physical disability, the fee for necessary in-court services of an interpreter or translator shall be paid by the court,

There appears, in the Evidence Rules Commentary to Evidence Rule 604, a remark suggesting that

[a]ppointment of an interpreter for the indigent defendant is probably constitutionally required if the defendant's understanding of the proceedings against him depends on it.

While this is a reasonable conclusion based on the commentator's review of judicial decisions, this statement should be understood to be the commentator's conclusion and is not a restatement of definitive state law.

III

California and New Mexico--two states with sizeable Spanish-speaking minorities--have explicit state constitutional provisions that guarantee the availability of interpreter and translator services.

The New Mexico provision, an element of article II, section 14 of that state's constitution, is the older, dating from a

Senator Duncan
Page 4
November 23, 1987

revision of that state's constitution in 1924. It reads, in pertinent part:

In all criminal prosecutions, the accused shall have the right to appear and defend himself in person, and by counsel; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have the charge and testimony interpreted to him in a language that he understands; to have compulsory process to compel the attendance of necessary witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. [Emphasis added.]

Limited as it is to procedures involving the reading of the criminal charge and presentation of the testimony, it appears to operate somewhat more narrowly than the California provision.

The California provision, part of article I, section 14 of that state's constitution, apparently dates from a 1974 revision of the state constitution. It reads in pertinent part:

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

There are case decisions in these two states interpreting and applying the respective provisions, and I would be pleased to summarize either or both for you if you want that degree of detail.

JC:mkr
m13/088

Louise Rude Center for Blind and Deaf Adults

CENTER FOR BLIND ADULTS
3903 Taft Drive
Anchorage, Alaska 99503
(907) 248-7770

CENTER FOR DEAF ADULTS
1020 E. 4th Avenue
Anchorage, Alaska 99501
(907) 276-3456

March 1, 1989

The Honorable Jim Duncan
Alaska State Senate
Attn: Roxanne Stewart
P.O. Box V
Juneau, Alaska 99811

Dear Senator Duncan:

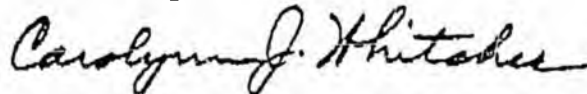
I have reviewed Senate Bill 52 and strongly support its passage. All members of the Judiciary Committee will be informed of this either by faxed letters or Public Opinion Messages (POMs).

This piece of legislation will impact persons who have been disenfranchised in our legal system. Use of qualified, impartial interpreters will enable non-English speakers and the courts to communicate. It will also clarify the issue of privileged communication involving the interpreter.

As you know, I am always interested in laws which affect deaf persons, especially those who use American Sign Language as their primary language. This law will assure them that their rights to be listened to in courts and other legal proceedings are being protected.

Thank you for introducing this bill along with Senators Sturgulewski and Kerttula. You have always been a strong advocate for the rights of deaf persons. Again, thanks for the time you and Roxanne Stewart shared with me last week. I appreciate the support you have given to the Louise Rude Center programs.

Sincerely,



Carolynn J. Witcher
Director

CJW:cp

Louise Rude Center for Blind and Deaf Adults

CENTER FOR BLIND ADULTS
3903 Taft Drive
Anchorage, Alaska 99503
(907) 248-7770

CENTER FOR DEAF ADULTS
1020 E. 4th Avenue
Anchorage, Alaska 99501
(907) 276-3456

March 1, 1989

The Honorable Jan Faiks
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

As Executive Director of the Louise Rude Center for Blind and Deaf Adults, I am very involved in and aware of interpreting issues affecting deaf people in the State of Alaska. One of our programs is the Interpreter Referral Line, through which we refer interpreters to facilitate communication in courts throughout the state.

Senate Bill 52 will be coming before you as chair of the Senate Judiciary Committee on Thursday, March 4, 1989. I am writing to request your support of this bill. S.B. 52 amends Alaska Statute 12.80 in several important ways. First, it reinforces the right of non-English speaking (including deaf) persons to have an interpreter in court when accused of a crime. It clarifies the role of an interpreter within court proceedings and deals with the issue of privileged communication involving the interpreter.

The bill also effectively delineates what information should be obtained from an interpreter when the court is seeking to establish an interpreter's qualifications and impartiality. These two conditions are necessary to insure that a deaf person fully understands and can participate in his or her own court proceedings.

I am in support of this bill and would like to point out that no revenues are attached to this bill. (I had the opportunity to discuss this bill with your aide, Mark Riehle, while in Juneau last week.) Feel free to contact me concerning this bill. I would be glad to address any questions you may have.

Sincerely,

Carolynn J. Whitcher
Carolynn J. Whitcher
Director

FISCAL NOTE

REQUEST:

Revision Date: March 6, 1989
Title: An act relating to the
use of interpreters
Sponsor: Senator Duncan
Requestor: Senate Judiciary

Agency Affected: Military & Veterans Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

There will be no fiscal impact on DMVA as a result of enactment of this bill.

Prepared by: Jeff Morrison, Director
Division: Administrative & Support Services, DMVA

Phone: 465-4600
Date: March 6, 1989

Approved by Commissioner: for MG John Schaeffer
Agency: Department of Military & Veterans Affairs

Date: March 6, 1989

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to use of
interpreters
 Sponsor: Senator Duncan
 Requestor: Senate Finance
 Agency Affected: DEC
 BRU: _____
All
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS: None

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Current agency policy would call for interpreters in the circumstances described in the bill. No fiscal impact.

Prepared by: Amy D. Kyle *AD Kyle* Phone: 465-2600
 Division: Commissioner's Office Date: 6 March 89

Approved by Commissioner: [Signature] Date: March 7, 1989
 Agency: Department of Environmental Conservation

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Use of interpreters in criminal and official proceedings.
 Sponsor: Duncan, Sturgulewski, Kerttula
 Requestor: _____

Agency Affected: Public Assistance
 BRU: Public Assistance Administration
 Components: Eligibility Determination

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | -0- | -0- | -0- | -0- | -0- | -0- |
| TRAVEL | -0- | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | -0- | -0- | -0- | -0- | -0- | -0- |
| SUPPLIES | -0- | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | -0- | -0- | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | -0- | -0- | -0- | -0- | -0- | -0- |
| GRANTS, CLAIMS | -0- | -0- | -0- | -0- | -0- | -0- |
| MISCELLANEOUS | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| TEMPORARY | -0- | -0- | -0- | -0- | -0- | -0- |

ANALYSIS : (Attach a separate page if necessary)

Prepared by: John R. Taber, Director
 Division: Public Assistance

Phone: 465-3347
 Date: 3/7/89

Approved by Commissioner: Maria M. Munson
 Agency: Department of Health & Social Services

Date: 3/7/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 52
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: Regarding use of interpreters in BRU: _____
criminal and official proceedings
Sponsor: Duncan, et al. Components: _____
Requester: Senate Judiciary Committee

EXPENDITURES / REVENUES : (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULLTIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PARTTIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Linda Wild, Special Assistant Phone: 465-2500
Division: Commissioner's Office Date: _____

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/7/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page 1 of 2

3495D-1/030789a

ANALYSIS:

Although the department does conduct certain hearings which fall under the provisions of this legislation (for example, admission and discipline hearings of the Division of Occupational Licensing, or public hearings of the Alaska Industrial Development and Export Authority), it would be speculative at this time to attempt to attach a cost for such proceedings. If enactment of this legislation should result in increased costs to the department in the future, the department would seek additional funding through the standard budget process.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to interpreters
 in criminal...official proceedings..."
 Sponsor: Senator Duncan
 Requestor: Senator Duncan

Agency Affected: Department of Law
 BRU: Prosecution, Legal Services
 Components: Prosecution - All
Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 10, 1989
 Approved by Commissioner: Richard I. Pegues / FOR
Grace Berg Scheible, Atty. Gen. Date: February 10, 1989
 Agency: Department of Law

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 52

Section 1 of this bill amends AS 12.80 to establish a right to an interpreter for a person who cannot readily understand or communicate the spoken english language who is charged with or convicted of a crime. The court would appoint a qualified interpreter to assist the person's defense throughout the criminal proceeding, and to assist the person in the completion of documents required by or related to the criminal proceedings, whenever the person represented to the court his or her inability to understand or communicate the spoken english language, absent a waiver provided by the person. The court would also appoint a qualified interpreter to assist a witness in a criminal proceeding when the witness does not understand and speak the english language. The bill provides that the cost of providing interpreters, under the section, shall be borne in accordance with the applicable court rule.

Court Administrative Rule 6(b) requires that the cost for interpreters shall be bore by the party requiring them. Consequently, the cost of interpreters needed by the defense for a defendant or witnesses, would be borne by the defense. Likewise, the cost of interpreters needed for witnesses called by the prosecution, would be borne by the prosecution. This has been a standard procedure since August 1, 1987 when Alaska Supreme Court Order 812 amended Administrative Rule 6(b), and when the court system transferred some of its interpreter funds to the Department of Law and the Public Defender Agency to accomplish this purpose. Consequently, this section should not have a fiscal impact on the Department of Law.

Section 2 of the bill amends AS 44.99 by adding a new section that establishes a right to an interpreter for a person who cannot readily understand or communicate the spoken english language, who is a party in a proceeding brought by or against a state agency and heard before an administrative body or official, including a proceeding under the Administrative Procedure Act. The bill further provides that the cost of interpreters for a party to the proceeding shall be borne by the state. When it is necessary to provide an interpreter to assist a witness in an administrative proceeding, the cost would be borne by the party offering the witness. Although the Department of Law often represents the staff of other state agencies in administrative proceedings, it rarely conducts proceedings of its own. Therefore, any costs for interpreters that would become the responsibility of the state, under this section, would be borne by those state agencies that conduct hearings. Consequently, this section will not have a fiscal impact on the Department of Law.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : SB 52
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An act relating to the use
of interpreters.....in official proceedings..." BRU: All
 Sponsor: Duncan, Sturgulewski, & Kerttula Components: All
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | 9.3 | 13.0 | 13.0 | 13.0 | 13.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS,CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 9.3 | 13.0 | 13.0 | 13.0 | 13.0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|------|------|------|------|
| GENERAL FUND | | 9.3 | 13.0 | 13.0 | 13.0 | 13.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 9.3 | 13.0 | 13.0 | 13.0 | 13.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

We estimate interpreters would be needed in 12 hearings held by the Department of Labor in FY 90. Seven of those hearings would be for Workers' Compensation cases, which each require about 40 hours of time for preparation and hearing. The other five cases would be for various programs in the department, and would average two hours each. Therefore, at a cost of \$32.00/hour for certified interpreters, the total cost in FY 90 would be \$9.3. The number of Workers' Compensation cases requiring an interpreter is expected to rise to 10 per year after FY 90, once the law becomes well known to affected parties. An effective date of July 1, 1989 is assumed.

Prepared by: Jim Sampson, Commissioner Phone: 465-2700
 Division: _____ Date: 3/7/89

Approved by Commissioner: Jim Sampson Date: 3/7/89
 Agency: Department of Labor

Distribution (by preparer) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: The use of interpreters in criminal and official proceedings
Sponsor: Senator Duncan
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments and C.I.B.

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 3/06/89

Approved by Commissioner: [Signature] Arthur English
Agency: Department of Public Safety

Date: 3/06/89

FISCAL NOTE

REQUEST: _____

Revision Date: _____
 Title: Use of Interpreters In Criminal
... and In Official Proceedings
 Sponsor: Duncan, Sturgulewski, & Kerttula
 Requestor: Senate Judiciary

Agency Affected: Education
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 3/6/89
 Approved by Commissioner: William G. Demmert Date: 3/6/89
 Agency: Education

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

| | | | |
|---------------|---|------------------|----------------------------|
| Revision Date | <u>4/20/89</u> | Agency Affected: | <u>Alaska Court System</u> |
| Title: | <u>An Act relating to the use of Interpreters in criminal proceedings</u> | BRU: | <u>Trial Courts</u> |
| Sponsor: | <u>Duncan, Sturgulewaki & Kerttula</u> | Components: | |
| Requestor: | <u>Judiciary</u> | | |

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| General Funds | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Federal Funds | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/20/89
 Date: 04/20/89

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Kit Stewart
4449 Taku Blvd.
Juneau, AK 99801
789-9411

Before the Senate Judiciary Committee 3-2-89,
on the proposed Committee Substitute for SB52:

My name is Kit Stewart. I've a master's in Adult Education and coordinate the local literacy program. I recruit adult students and tutors, train the tutors in basic reading and English as a Second Language, and, I facilitate. That covers a multitude of sins. Last week I persuaded a state agency to be d the rules which require that the request for a supplemental appropriation for a stale-dated warrant be submitted in writing. One of our students went to the agency and called me when they asked her to write a letter. She is on welfare and not about to pay \$20.00 an hour for a translator to get a \$30.00 check reissued. I suggested the agency either accept a written request in Vietnamese, or write the letter for her and have her sign it. They opted for the latter. That incident doesn't exactly fit SB52 but it points out the pervasiveness of the literacy barrier and its financial impact on people who can least afford it.

The major problems are much worse, especially in the legal area. Our whole system of jurisprudence and civil rights is so totally alien to many foreigners that, even when their rights are translated to them, the words do not always mean what we expect. One ex-prisoner, after learning English, said, "I pleaded no-contest because I didn't know I was allowed to prove my innocence." In his country, guilt was presumed--protest too much and you could get killed--so the thing to do was go along quietly and bribe your way out later. Since his translator didn't know much more about our system than he did, no one ever realized what was happening and assumed he was guilty. This illustrates the need for qualified interpreters--who know more than how to buy groceries in English.

In a Ketchikan case, three South American nationals were jailed on drug charges. Only one spoke any English. He acted as the interpreter for all three. If they were equally guilty, that served their purpose; if not, he didn't do them any favors. Interpreters should be impartial.

Another case: A prison official had a prisoner sign a document waiving his right to apply for parole. The prisoner thought what he was signing was a guarantee saying when and where he would be paroled. Eventually, someone saw the paper and told him the truth. When he could again apply, they gave him a multi-page bureaucratic application form. Requests from prisoners must be in writing. He managed to ask for a translator and received the written answer, "That's up to your attorney." Without an interpreter, he thought that meant they were getting him an attorney, and waited anxiously. When the deadline arrived, and he hadn't, somehow, filled out the form, they called in his 18-

year old daughter to help him. I don't know how many of you have teenagers, but, if you do, would you rely on their ability with English as a first language to get you out of jail? Imagine if your child's English was a second language! If the government requires prisoners to complete and sign forms, they should be required to furnish qualified interpreters so the prisoners know what they are signing.

A third case: A limited-English Asian prisoner needed to talk to someone. Another inmate called the Bahai's, who called me, and I found a housewife who could talk to him. When I called the jail to see how to do it, I was told, "He's just conning you. He knows English. Every time I ask if he understands, he says, 'Yes.'" So, she wasn't allowed to visit.

That official's statement is an ignorant cliché, a joke among educators. "Yes," is one of the first words many students learn and they use it for everything.

In some Asian countries it is better to give an agreeable answer than to tell the truth. If the questioner wants truth, he is expected to rephrase the question to allow an affirmative answer. In another country, questions are always answered first with "Yes" meaning "I hear you," then with the actual yes or no answer.

The bureaucratic and legalistic habit of cutting people off after the first response can lead to grievous errors if an adequate interpreter is not there to prevent it by waiting for the complete answer.

One last example: When my own student got out of jail, he stayed with us a few days before going to live with relatives elsewhere. A couple of months beforehand, the jail had gone over all his general release do's and don'ts with him. After release, his probation officer and I carefully reviewed them again and explained his specific requirements. His responses showed he understood everything very well. So, we put him on the plane. Three months later Chuck and I went to visit him and discovered he had been under virtual house arrest in a tiny apartment the whole three months. Apparently, when they were explaining the rules at the jail, someone told him to, "Keep your nose clean," and the translator explained it meant, "No let police see face. No go outside house only one. Police look face, you go jail." He thought the post-release instructions were in addition, rather than instead of, the translator's poor interpretation. All of which shows that even the best intentioned people can screw up and not cancel out errors caused by unqualified interpreters.

Of course, legislation can't cure everything. But, if it does nothing more than make courts and officials question their actions, before they proceed without an interpreter or just haul anybody in off the street to translate, then, I believe, it will be a big step in the right direction. Thank you.

Chuck Stewart
4449 Taku Blvd.
Juneau, AK 99801
789-9411

Before the Senate Judiciary Committee 3-2/89,
on the proposed Committee Substitute for SB52

Madam Chairman--

My name is Chuck Stewart. I want to tell you a story that shows why we need this bill--and even more protection for people who can't communicate in English.

Picture this: A refugee is jailed on felony charges. His interpreter at the preliminary hearings and confidential attorney meetings is a female clerk at the Dept. of Public Safety. While in jail, his minister, who is also his immigration sponsor, comes to visit. In the words of the minister, the defendant sees him as the "savior" of his family. The jail allows a fellow prisoner to act as their interpreter. The fellow prisoner is in jail for the sexual assault of a child--the child of the Dept. of Public Safety clerk! (THERE'S ONE RELATIONSHIP.)

The minister tells the defendant that, if he would plead guilty, the minister would talk to the judge and the defendant would get out of jail in 1-2 years. If he pleads innocent, he would stay in jail 10 years and then be deported. The defendant doesn't know then, that his "savior" is also the accuser and a star prosecution witness. (THERE'S ANOTHER RELATIONSHIP.)

When the trial started, a different woman was hired to interpret. The Judge instructed her: "Ask [the defendant] if he objects to your being his translator and also the translator for the jury."

On the trial tape there is a female voice in a foreign language which someone recently translated as asking who the defendant's interpreter was last week. Then, the defendant's voice says the Public Safety clerk's name, and the interpreter tells the Judge: "He has no ob-objection." (THERE'S ANOTHER PROBLEM.)

During the first several hours of the trial, the Public Safety clerk is on the jury panel and allowed to mingle with them. She is not excused until it is decided that the clerk will replace the other translator when she leaves on vacation.

There is nothing on the tapes to indicate that the clerk was ever instructed not to talk about conversations between defendant and attorney, or that she or the other jurors were ever asked if they had talked about the defendant prior to the clerk's being excused.

The person was convicted of a felony and is out on parole today after serving four years of an eight year sentence.

The underlying cause of his being found guilty lies in two closely related areas. One--Cultural differences, and two--a complete lack of understanding of the English language. There isn't too much that can be done about the cultural differences as you certainly cannot legislate the understanding of different cultural backgrounds. However, in the case of not understanding English, this person could not hope to comprehend even his most basic rights under American law.

My wife has alluded to several instances of misunderstanding by both English and non English speaking persons involved with our criminal justice system. Allow me to give some instances taken directly from copies of court tapes.

1) The interpreter says the defendant has poor hearing, that he left his glasses in prison, and that he couldn't read the interpreter's writing. The Judge asks if he can hear if she talks loudly. She speaks to the defendant and says, "I don't know." The defense attorney says to the interpreter, "He doesn't speak English, he doesn't understand, he can't hear you. Tell him to tell me." NOWHERE IN THE TAPE DOES ANY INTERPRETER EVER TELL THE DEFENSE ATTORNEY IF OR WHEN THE DEFENDANT DOESN'T UNDERSTAND OR CAN'T HEAR.

2) The defense attorney got wires crossed and didn't interview a witness during recess. The attorney starts to talk to the interpreter and interview the witness when the Judge stops her and says "You can't use the translator for the jury, You will have to use the translator for the defendant." THE TRANSLATOR THAT IS USED IS NOT ONLY THE DEFENDANT'S CONFIDENTIAL INTERPRETER BUT ALSO IS USED TO INTERVIEW A PROSECUTION WITNESS HOSTILE TO HIM.

3) The defense attorney questions the interpreter on experience and understanding: In U.S.A. four years, just graduated Sitka High School, age 19. Never in court but has helped people in California with translations.

ATTORNEY: "You, have to translate every word."

INTERPRETER: "But, uh, translate every word is pretty hard. See, if you want the meaning, is easy. If you want the word by word, is pretty hard."

ATTORNEY: "Okay. I don't know Vietnamese, so you have to do it as accurately as possible."

INTERPRETER: "Yes, I try do that."

Here are some examples of that interpreter's translations:

---INTERPRETER: "Uh, the, the man say that, 'If you think, your father say it's right.' So, that's what the father he say, 'Oh yeah,' and, go."

---ATTORNEY: "Could you tell me in English, what you just told her?"

INTERPRETER: "I told, I told her that, has she heard, uh, is uh, tape say real, uh, just like, uh, uh, uh, he--her husband, he drunk an' talk, uh, say something like that?"

---THE PROSECUTING ATTORNEY referring to the interpreter says, "I must say, I'm rather unhappy we didn't get a better translator."

---The defense attorney has a witness who doesn't speak English and, since the State has objected to using [the defendant's interpreter] for the jury, says, "I'm willing to have [and here she names the person who is known to be hostile to the defense]."

JUDGE: "Ladies and gentlemen, the next witness may need an interpreter. [This individual] who has interpreted before is going to interpret for him."

SOMEONE asks, "Do we need to swear [this person] in?"

ANSWER: "He's still under oath."

WE COULD FIND NO RECORD THAT THIS PERSON WAS EVER SWORN IN AS AN INTERPRETER.

Incidentally, his interpretations were taken by the Judge over those of the officially appointed court interpreter.

I am not here today to plead this person's innocence. Guilty or innocent, the problems he encountered regarding State responsibility for qualified interpreters would be the same.

I sincerely hope that the above examples, taken from an actual case will serve to encourage the passing of the bill presently under consideration by this committee. Thank you.

Original sponsors: Duncan, Sturgulewski,
Kerttula, and Binkley

1 IN THE SENATE

2 CS FOR 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."

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

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

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

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

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

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

24 (c) When a witness other than the defendant in a proceeding
25 under this title does not understand and speak the English language,
26 the court shall appoint a qualified interpreter to interpret for the
27 witness while the witness is testifying.

28 (d) The person accused of a crime may waive the right granted
29 under (a) of this section only if

- 1 (1) the court obtains a written waiver from the person;
2 (2) counsel, if any, consents; and
3 (3) the court determines that the waiver has been made
4 knowingly, voluntarily, and intelligently.

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

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

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

11 (2) any information the interpreter obtains while inter-
12 preting pertaining to any proceeding then pending.
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6-0112E
Chenoweth
2/9/89

Original sponsors: Duncan, Sturgulewski,
Kerttula, and Binkley

1 IN THE SENATE

2 CS FOR 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."

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16 this title; and

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

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

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

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.

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

15 Sec. 44.99.020. RIGHT TO AN INTERPRETER. (a) A person who is a

16 party ~~or witness~~ in an official proceeding and who cannot readily

17 understand or communicate the spoken English language has a right to

18 the services of a qualified interpreter to assist the person through-

19 out an official proceeding and to complete documents required by or

20 related to that proceeding. ~~_____~~

21 (b) When a person who is a party in an official proceeding

22 represents to the presiding officer at an official proceeding an

23 inability to understand or communicate the spoken English language, or

24 to read and understand a document that the person is required to sign,

25 in the absence of a waiver provided by the person, the presiding

26 officer at the official proceeding shall appoint a qualified inter-

27 preter to assist the person throughout that proceeding.

28 (c) When a person who is a witness but not a party in an offi-

_____ the English language, the

1 presiding officer at that proceeding shall appoint a qualified inter-
2 preter to interpret for the witness. ^{who is sworn or is testifying} ~~If the proceeding is not under~~
3 ~~oath, the presiding officer shall allow a qualified interpreter to~~
4 ~~interpret for the witness.~~ ?

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

11 (1) education, certification, and experience in interpret-
12 ing in similar proceedings;

13 (2) understanding of the basic vocabulary of the languages
14 for which interpretation is required;

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

17 (4) impartiality.

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

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

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

25 (2) would serve both by appointment under (b) of this sec-
26 tion and as an interpreter sworn or allowed to serve under (c) of this
27 section.

28 (g) If the official proceeding is conducted under oath, a qual-
29 ified interpreter appointed under this section shall before

Original sponsors: Duncan, Sturgulewski,
Kerttula, and Binkley

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 52 (Judiciary)

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."
9

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

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

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

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

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

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

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

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

15 Sec. 44.99.020. RIGHT TO AN INTERPRETER. (a) A person who is a
16 party in an official proceeding and who cannot readily understand or
17 communicate the spoken English language has a right to the services of
18 a qualified interpreter to assist the person throughout an official
19 proceeding and to complete documents required by or related to that
20 proceeding.

21 (b) When a person who is a party in an official proceeding
22 represents to the presiding officer at an official proceeding an
23 inability to understand or communicate the spoken English language, or
24 to read and understand a document that the person is required to sign,
25 in the absence of a waiver provided by the person, the presiding
26 officer at the official proceeding shall appoint a qualified inter-
27 preter to assist the person throughout that proceeding.

28 (c) When a person who is a witness but not a party in an offi-
29 cial proceeding does not understand or speak the English language, the

1 presiding officer at that proceeding shall appoint a qualified inter-
2 preter to interpret for the witness while the witness is testifying.

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

9 (1) education, certification, and experience in interpret-
10 ing in similar proceedings;

11 (2) understanding of the basic vocabulary of the languages
12 for which interpretation is required;

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

15 (4) impartiality.

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

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

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

23 (2) would serve both by appointment under (b) of this sec-
24 tion and as an interpreter sworn or allowed to serve under (c) of this
25 section.

26 (g) If the official proceeding is conducted under oath, a qual-
27 ified interpreter appointed under this section shall, before commenc-
28 ing upon the duties of an interpreter, take an oath that a true inter-
29 pretation will be made to the person being examined of all the

1 official proceedings in a language that the person understands, and
2 that the interpreter will repeat the statements of the person being
3 examined to the persons conducting and participating in the proceeding
4 in the English language, to the best of the interpreter's skill and
5 judgment.

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

8 (1) the person executes a written waiver;

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

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

13 (i) Except for a person who serves as a volunteer interpreter,
14 an interpreter appointed or allowed to serve under this section shall
15 be adequately compensated for the services that the interpreter per-
16 forms and shall be reimbursed for standby time and actual travel-
17 related expenses. If the interpreter is appointed under (b) of this
18 section, the cost of providing the interpreter shall be borne by the
19 state. If the interpreter is appointed or allowed to serve under (c)
20 of this section, the cost of providing the interpreter shall be borne
21 by the party offering the witness.

22 (j) In this section

23 (1) "official proceeding" means a proceeding brought by or
24 against a state agency and heard before an administrative body or
25 official, including a proceeding under the Administrative Procedure
26 Act (AS 44.62);

27 (2) "qualified interpreter" means a person not disqualified
28 by (f) of this section, who is not otherwise disqualified because of
29 lack of impartiality, and who is readily able to interpret spoken and

1 translate written English to and for a party or witness in an official
2 proceeding and to interpret or translate statements by the party or
3 witness into English;

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