HOUSE . . . . . No. 2208

By Mr. Fitzgerald of Boston, petition of Kevin W. Fitzgerald, Patricia G. Fiero, Kevin P. Blanchette and Byron Rushing for legislation to provide a court interpreter system in the Trial Court and a pilot project in Essex County for non-English speaking persons. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT TO PROVIDE A COURT INTERPRETER SYSTEM IN THE TRIAL COURT AND A PILOT PROJECT FOR SAME IN ESSEX COUNTY FOR NON-ENGLISH SPEAKING PERSONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by
2 inserting after chapter 221 the following chapter: —

3 **CHAPTER 221A**

4 Section 1. The purposes of this chapter are (1) to provide the
5 broadest possible protection for the rights of non-English
6 speaking persons, regardless of financial position, to understand
7 and to be understood when engaged as parties or witnesses in legal
8 proceedings in the trial court departments and (2) to institute a
9 pilot project for initially effectuating the foregoing in Essex
10 county, so as to ascertain and resolve problems, calculate and
11 project costs and otherwise make more likely an efficient
12 operation when the system is instituted statewide. The chapter
13 shall be liberally interpreted to effectuate these purposes. The
14 provisions of this chapter shall not be construed to limit the
15 inherent power of a judge to appoint an interpreter in any other
16 proceeding.
17 Section 2. For the purpose of this chapter, the following words
18 shall have the following meanings:

19 "Certified interpreter," an interpreter who has been duly trained
20 and certified under the direction of the coordinator of interpreter
21 services pursuant to section eight (e).
22 "Interpreter," a person who is readily able to interpret written
23 and spoken language simultaneously and consecutively from
24 English to the language of the non-English speaker or from said
25 language to English.
26 "Judge," a judge or justice, or a clerk-magistrate when acting
27 in a magisterial capacity, of a trial court department.
28 "Non-English speaker," a person who cannot speak or
29 understand or has difficulty in speaking or understanding, the
30 English language, because he uses only or primarily a spoken
31 language other than English.
32 "Qualified interpreter," a certified interpreter who has also
33 passed the examination and been qualified for interpreting in the
34 federal courts by the United States district court for the district
35 of Massachusetts.
36 Section 3. A non-English speaker, throughout a legal
37 proceeding, shall have a right to the assistance of a qualified
38 interpreter who shall be appointed by the judge, unless the judge
39 finds that no qualified interpreter of the non-English speaker's
40 language is reasonably available, in which event the non-English
41 speaker shall have the right to a certified interpreter, who shall
42 be appointed by the judge. The court shall report to the
43 coordinator of interpreter services of every instance in which a
44 qualified interpreter was found not to be reasonably available.
45 Section 4. (a) A waiver of the right to an interpreter by a non-
46 English speaker shall be effective only when approved by a judge
47 after the non-English speaker has consulted with counsel and had
48 explained to him, through an interpreter, in open court by the
49 judge the nature and effect of such waiver. The judge may approve
50 a waiver only upon finding that it is knowingly and voluntarily
51 made. If the waiver is approved, the judge shall ensure that a
52 recitation of the procedure followed pursuant to this subsection
53 is made part of the record.
54 (b) The failure of a non-English speaker to request an
55 interpreter shall not be deemed a waiver of such right, and a non-
56 English speaker may retract any waiver of his right to an

57 interpreter at any stage of the proceeding and indicate his desire
58 to be assisted by an interpreter.
59 Section 5. (a) Before beginning to interpret in any proceeding
60 an interpreter shall swear or affirm that he will make true and
61 impartial interpretation using his best skill and judgment in
62 accordance with the standards prescribed by law and the ethics
63 of the interpreter profession.
64 (b) In any proceeding, the judge may order all of the testimony
65 of a non-English speaker and its interpretation to be electronically
66 recorded for use in an audio and/or visual verification of the
67 official transcript of the proceedings.
68 (c) A non-English speaker has a privilege to prevent an
69 interpreter from disclosing a confidential communication made
70 between one or more persons where the communication was
71 facilitated by said interpreter. For purposes of this subsection, a
72 communication is confidential if a non-English speaker has a
73 reasonable expectation or intent that it not be disclosed to persons
74 other than those to whom disclosure is made.
75 Section 6. Any of the following actions shall be good cause for
76 a judge to remove an interpreter:
77 (a) Knowingly and willfully making false interpretation while
78 serving in an official capacity;
79 (b) Knowingly and willfully disclosing confidential or privileged
80 information obtained while serving in an official capacity;
81 (c) Failing to follow the standards prescribed by law and the
82 ethics of the interpreter profession; or
83 (d) Being unable to interpret adequately, including where the
84 interpreter self-reports such inability.
85 Section 7. Interpreters appointed pursuant to this chapter shall
86 be reimbursed for actual expenses and compensated for their
87 services. Adequate compensation for services shall be determined
88 by a schedule of fees adopted by the committee pursuant to section
89 eight (d).
90 Section 8. (a) There shall be a committee for the administration
91 of interpreters for the trial court, which committee shall consist
92 of the chief administrative justice of the trial court, who shall be
93 the chairman of said committee, the administrative justice of the
94 district court department and one other justice and one clerk-

95 magistrate of said department appointed by said administrative
96 justice, a justice and a clerk or an assistant clerk of the superior
97 court department appointed by the administrative justice of said
98 department, a judge of the probate and family court department
99 appointed by the administrative judge of said department and one
100 other justice, judge or clerk-magistrate appointed by the chief
101 administrative justice of the trial court.
102 (b) Following the standards and procedures of the chief
103 administrative justice of the trial court, the committee shall
104 advertise, screen applications, interview, select and appoint the
105 coordinator of court interpreter services, who shall serve at the
106 pleasure of said committee.
107 (c) There shall be within the office of the chief administrative
108 justice a coordinator of court interpreter services for the trial court
109 and such other professional and clerical personnel as may be
110 necessary in the judgment of said coordinator and the committee.
111 (d) The coordinator or the committee shall propose standards
112 and procedures for the training, professional conduct,
113 certification, qualification and adequate compensation of certified
114 and qualified interpreters. Notice of hearing on any such proposed
115 standards or procedures shall be published in the Massachusetts
116 Register as if they were administrative regulations to be adopted
117 pursuant to section two of chapter thirty A; and the proposed
118 standards or procedures shall be reproduced and distributed to
119 organizations representing the interests of foreign language users
120 with notice of the public hearing date, which shall occur no sooner
121 than sixty days thereafter. After due consideration of public
122 comment at the public hearing or otherwise, the committee shall
123 adopt final standards and procedures and cause the same to be
124 published in the Massachusetts Register.
125 (e) The coordinator of court interpreter services shall administer
126 the interpreter program in the trial court to insure that the
127 purposes of this chapter are carried out completely and efficiently.
128 Without limiting the generality of the foregoing the coordinator
129 shall specifically:
130 (1) Establish and conduct a training program for interpreters
131 in which they shall be trained and examined on language
132 proficiency, proper conduct in court, professional ethics and other

133 matters deemed appropriate. Persons successfully completing the
134 course shall be duly certified;
135 (2) Compile and maintain lists of persons who have been
136 certified and qualified and periodically communicate the
137 information to the several deparments and divisions of the trial
138 court;
139 (3) After due notice and hearing, remove anyone from such a
140 list for inadequate performance or other good cause as provided
141 in section six;
142 (4) Facilitate the prompt payment of interpreters for services
143 rendered; and
144 (5) Gather statistics, conduct studies and make reports of the
145 results thereof and of the administration of the program generally.

1 SECTION 2. Nothing in this Act is intended, or shall have the
2 effect of, in any way limiting any rights, privileges, entitlements,
3 powers or immunities of a speech- or hearing-impaired person
4 pursuant to section ninety-two A of chapter two hundred and
5 twenty-one.

1 SECTION 3. (a) Section 2 of this Act and subsections (a), (b)
2 and (c) of section eight of chapter two hundred and twenty-one
3 A, inserted by section 1 of this Act, shall take effect on March
4 1, 1988.
5 (b) With respect to the trial court departments in Essex County:
6 (1) Subsections (d) and (e) of section eight of said chapter two
7 hundred and twenty-one A shall take effect on July 1, 1988, and
8 (2) The remainder of this Act shall take effect on October 3,
9 1988.
10 (c) With respect to the trial court departments in counties other
11 than Essex, subsection (d) and (e) of said section eight and the
12 remainder of this Act shall take effect when certified as
13 appropriate by the Chief Administrative Justice of the Trial Court
14 in a report to the General Court.