

By Mr. Manning of Milton, petition of M. Joseph Manning relative to the rights of deaf persons in judicial and quasi-judicial proceedings. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE RIGHTS OF DEAF PEOPLE IN JUDICIAL AND QUASI-JUDICIAL PROCEEDINGS.

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 92A of Chapter 221 of The General Laws is hereby
2 amended as follows:

3 In any proceeding in any court, executive or legislative board,
4 commission, agency, bureau, committee, or other body or political
5 subdivision of the state in which a deaf or hard of hearing person is
6 a party or parent or witness, said body or subdivision shall procure
7 through the massachusetts commission for the deaf and hard of
8 hearing a qualified interpreter to interpret said proceedings unless
9 such deaf or hard of hearing person knowingly, voluntarily and
10 intelligently makes written waiver of a qualified interpreter. Such
11 waiver is subject to the written approval of counsel where such deaf
12 or hard of hearing person is represented by counsel. In no event
13 shall the failure of the deaf or hard of hearing person to request an
14 interpreter be deemed a waiver of his right to a qualified
15 interpreter.

16 Whenever a deaf or hard of hearing person is arrested for alleged
17 violation of a criminal law, including a local ordinance, the local
18 police commissioner or his designee shall procure from the massa-
19 chusetts commission for the deaf and hard of hearing a qualified
20 interpreter which interpreter's presence shall precede the making of
21 any communication with said deaf or hard of hearing person

22 including but not limited to warnings, notification of rights, inter-
23 rogation or taking of a statement. No answer, statement, or admis-
24 sion, written or oral, made by a deaf or hard of hearing person in
25 response to any question by a law enforcement officer or by any
26 prosecutor may be used against such deaf or hard of hearing person
27 unless such statement was made or elicited through a qualified
28 interpreter and was made knowingly, voluntarily and intelligently
29 or, in the case of waiver of interpreter, unless the court makes a
30 special finding that any such statement was made knowingly,
31 voluntarily and intelligently.

32 The court shall procure through the massachusetts commission
33 for the deaf and hard of hearing a qualified interpreter to assist a
34 deaf or hard of hearing defendant in communication with counsel
35 in all phases of preparation and presentation of a criminal case.

36 The court shall procure through the massachusetts commission
37 for the deaf and hard of hearing a qualified interpreter to interpret
38 all communications material to a sentence or probationary term,
39 including but not limited to court-ordered services and courses of
40 study.

41 In all proceedings involving an interpreter under this section, no
42 testimony shall be admitted as evidence until: (1) the interpreter is
43 so situated as to assure effective communication between all per-
44 sons having a substantial interest in the outcome of such proceed-
45 ings,

46 (2) the interpreter swears under oath, that he will provide a true
47 and accurate interpretation of the proceedings to the best of his
48 skill and judgment, and

49 (3) the person conducting such proceedings determines, on the
50 basis of testimony of the interpreter and the deaf or hard of hearing
51 person, that such interpreter is able in that particular proceeding to
52 communicate accurately with and translate information to and
53 from such deaf or hard of hearing person.

54 If, at any time during the proceeding, it is determined that the
55 interpreter is no longer able to provide effective communication
56 between the parties, the person conducting such proceeding shall
57 appoint another qualified interpreter in accordance with the provi-
58 sions of this section.

59 For the purposes of this section, the following words shall have
60 the following meanings: —

61 “Intermediary interpreter”, a qualified interpreter who, because
62 of an intimate acquaintance with deaf or hard of hearing persons
63 who use mainly natural or unusual gestures for communicating,
64 can act as a mediator between the hard of hearing person and a
65 qualified interpreter.

66 “Procure”, obtain the services of a qualified interpreter and pay
67 the massachusetts commission for the deaf and hard of hearing for
68 said services.

69 “Qualified interpreter”, an interpreter skilled in sign language or
70 oral interpretation and transliteration, with the ability to commu-
71 nicate accurately with a deaf or hard of hearing person and to
72 translate information to and from such deaf or hard of hearing
73 person, and duly licensed by the interpreter licensing board of the
74 massachusetts commission for the deaf and hard of hearing, based
75 upon recommendations of the massachusetts registry of the deaf,
76 incorporated, the massachusetts state association of the deaf and
77 other appropriate agencies.

78 A client has a privilege to prevent a qualified interpreter from
79 disclosing a confidential communication made between one or
80 more persons where the communication was facilitated by said
81 interpreter. For purposes of this paragraph, a client is any person
82 rendered interpreting services by an interpreter; a communication
83 is confidential if a client has a reasonable expectation or intent that
84 it not be disclosed to persons other than those to whom disclosure
85 is made.

86 Nothing in this section shall be construed to prevent any
87 department, board, commission, agency or licensing authority
88 from employing a qualified interpreter, who is recommended by
89 the massachusetts commission for the deaf and hard of hearing, on
90 a full-time basis or under contract at a mutually agreed upon
91 compensation rate.

