

CHAPTER 238

COURTS

SENATE BILL 06-061

BY SENATOR(S) Keller, Bacon, Boyd, Gordon, Grossman, Hagedorn, Isgar, Kester, Shaffer, Tochtrop, Tupa, Veiga, Williams, Windels, Evans, and Tapia;
also REPRESENTATIVE(S) Larson, Berens, Borodkin, Coleman, Gallegos, Green, Kerr A., Merrifield, Solano, and Witwer.

AN ACT

**CONCERNING PROVIDING INTERPRETATION IN LEGAL SITUATIONS FOR PERSONS WITH HEARING LOSS,
AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-90-201, Colorado Revised Statutes, is amended to read:

13-90-201. Legislative declaration. The general assembly hereby finds and declares that it is the policy of this state to secure the rights of persons who ~~because of impaired hearing,~~ ARE DEAF OR HARD OF HEARING AND cannot readily HEAR OR understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings of the courts or any board, commission, agency, or licensing or law enforcement authority of the state or any of its political subdivisions unless qualified interpreters OR AUXILIARY SERVICES are available to assist them.

SECTION 2. 13-90-202, Colorado Revised Statutes, is amended to read:

13-90-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, agency, or licensing or law enforcement authority of the state or any of its political subdivisions.

(2) ~~"Hearing-impaired person" means a person who has a functional hearing loss of sufficient severity to prevent aural comprehension even with the assistance of hearing aids.~~ "ASSISTIVE LISTENING DEVICE" MEANS AN AMPLIFICATION SYSTEM

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THAT OPERATES IN CONJUNCTION WITH A HEARING AID TO INCREASE THE VOLUME OF SOUNDS FOR THE HEARING AID ONLY.

(3) "Auxiliary services" means those AIDS AND services that assist in effective communication with a person who is deaf or hard of hearing, including but not limited to:

(a) THE PROVISION OF A COMPUTER-AIDED REALTIME TRANSLATIONS (CART) REPORTER;

(b) THE PROVISION OF AN ASSISTIVE LISTENING DEVICE; OR

(c) THE ACQUISITION OR MODIFICATION OF EQUIPMENT OR DEVICES TO ASSIST IN EFFECTIVE COMMUNICATION WITH A PERSON WHO IS DEAF OR HARD OF HEARING.

(4) "COMMISSION" MEANS THE COLORADO COMMISSION FOR THE DEAF AND HARD OF HEARING IN THE DEPARTMENT OF HUMAN SERVICES CREATED IN SECTION 26-21-104, C.R.S.

(5) "COMPUTER-AIDED REALTIME TRANSLATION (CART) REPORTER" MEANS A WORD-FOR-WORD SPEECH-TO-TEXT TRANSLATION SERVICE FOR PEOPLE WHO ARE DEAF OR HARD OF HEARING.

(6) "DEAF OR HARD OF HEARING" MEANS A PERSON WHO HAS A FUNCTIONAL HEARING LOSS OF SUFFICIENT SEVERITY TO PREVENT AURAL COMPREHENSION, EVEN WITH THE ASSISTANCE OF HEARING AIDS.

(7) "EFFECTIVE COMMUNICATION" MEANS THOSE METHODS OF COMMUNICATION THAT ARE INDIVIDUALIZED AND CULTURALLY APPROPRIATE TO A PERSON WHO IS DEAF OR HARD OF HEARING SO THAT HE OR SHE CAN EASILY UNDERSTAND ALL AUDITORY INFORMATION.

~~(3) "Intermediary interpreter" means any qualified interpreter, including any hearing-impaired person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language by acting as an intermediary between a hearing-impaired person and a qualified interpreter.~~

~~(4)~~ (8) "Qualified interpreter" means a ~~sign language interpreter or oral interpreter whose name is found on the interpreter referral resources list maintained pursuant to section 13-90-205 by the division of rehabilitation which was administratively created by the department of human services~~ PERSON WHO HAS A VALID CERTIFICATION OF COMPETENCY ACCEPTED BY THE COMMISSION AND INCLUDES, BUT IS NOT LIMITED TO, ORAL INTERPRETERS, SIGN LANGUAGE INTERPRETERS, AND INTERMEDIARY INTERPRETERS.

SECTION 3. 13-90-203, Colorado Revised Statutes, is amended to read:

13-90-203. Powers and duties of the department of human services. The department of human services shall promulgate rules ~~and regulations~~ pursuant to article 4 of title 24, C.R.S., which have been proposed by the ~~division of~~

~~rehabilitation~~ COMMISSION as necessary for the implementation of this part 2. THE RULEMAKING PROCESS SHALL BE OPEN AND AVAILABLE FOR INPUT FROM THE PUBLIC, INCLUDING BUT NOT LIMITED TO INTERPRETERS AND CONSUMERS OF INTERPRETER SERVICES.

SECTION 4. 13-90-204 (1), Colorado Revised Statutes, is amended to read:

13-90-204. Appointment of interpreter and auxiliary services - when. (1) A qualified interpreter OR AUXILIARY SERVICE shall be ~~appointed~~ PROVIDED by an appointing authority to interpret the proceedings to ~~the hearing-impaired~~ A person WHO IS DEAF OR HARD OF HEARING and to interpret the ~~hearing-impaired person's testimony~~ STATEMENTS OF THE PERSON WHO IS DEAF OR HARD OF HEARING in the following instances:

(a) When a ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING is ~~involved in any criminal court proceeding and such proceeding may result in the confinement of such person or the imposition of a penal sanction against such person~~ PRESENT AND PARTICIPATING AS THE PRINCIPAL PARTY OF INTEREST OR A WITNESS AT ANY CIVIL OR CRIMINAL PROCEEDING, INCLUDING BUT NOT LIMITED TO ANY CRIMINAL OR CIVIL COURT PROCEEDING; A COURT-ORDERED OR COURT-PROVIDED ALTERNATIVE DISPUTE RESOLUTION, MEDIATION, OR ARBITRATION; AN ADMINISTRATIVE, COMMISSION, OR AGENCY HEARING; OR A HEARING OF A LICENSING AUTHORITY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS;

(b) When a ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING is ~~the principal party in interest or witness at any stage of the following judicial proceedings in this state or in its political subdivisions: Grand jury proceedings, juvenile delinquency proceedings, child neglect or dependency proceedings, mental health commitment proceedings, and any other proceeding ordered by a court in connection with these enumerated proceedings~~ INVOLVED IN ANY STAGE OF GRAND JURY OR JURY PROCEEDINGS AS A POTENTIAL OR SELECTED JUROR;

(c) When a juvenile whose parent or parents are ~~hearing-impaired~~ DEAF OR HARD OF HEARING is brought before a court for any reason;

(d) When a ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING is arrested and taken into custody for an alleged violation of a criminal law of the state or any of its political subdivisions. Such appointment shall be made prior to any attempt to notify the arrestee of his OR HER constitutional rights and prior to any attempt to interrogate or to take a statement from such person; except that ~~no hearing-impaired~~ A person WHO IS DEAF OR HARD OF HEARING AND who is otherwise eligible for release shall NOT be held pending the arrival of a qualified interpreter.

(e) ~~When a hearing-impaired person is the principal party in interest in any proceeding before any board, commission, agency, or licensing authority of the state or any of its political subdivisions.~~

(f) WHEN EFFECTIVE COMMUNICATION CANNOT BE ESTABLISHED WITHOUT AN AUXILIARY SERVICE AND WHEN AN ALLEGED VICTIM OR WITNESS IS A PERSON WHO IS DEAF OR HARD OF HEARING, WHO USES SIGN LANGUAGE FOR EFFECTIVE

COMMUNICATION, AND IS QUESTIONED OR OTHERWISE INTERVIEWED BY A PERSON HAVING A LAW ENFORCEMENT OR PROSECUTORIAL FUNCTION IN ANY CRIMINAL INVESTIGATION, EXCEPT WHERE THE LENGTH, IMPORTANCE, OR COMPLEXITY OF THE COMMUNICATION DOES NOT WARRANT PROVISION OF AN AUXILIARY SERVICE. ASSESSMENT OF WHETHER THE LENGTH, IMPORTANCE, OR COMPLEXITY OF THE COMMUNICATION WARRANTS PROVISION OF AN AUXILIARY SERVICE SHALL BE MADE IN ACCORDANCE WITH UNITED STATES DEPARTMENT OF JUSTICE REGULATIONS EFFECTUATING TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", INCLUDING REGULATIONS, ANALYSIS, AND TECHNICAL ASSISTANCE.

(g) NOTHING IN THIS PART 2 SHALL BE CONSTRUED TO PROVIDE LESS THAN IS REQUIRED BY TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT", 42 U.S.C. 12101, AND ITS IMPLEMENTING REGULATIONS.

SECTION 5. 13-90-205, Colorado Revised Statutes, is amended to read:

13-90-205. Coordination of interpreter and auxiliary services requests.

(1) ~~The division of rehabilitation which has been administratively created by the department of human services~~ COMMISSION, IN COLLABORATION WITH THE JUDICIAL DEPARTMENT, shall establish, MONITOR, COORDINATE, AND PUBLISH ~~maintain, update, and distribute an interpreter referral resources list for use by any appointing authority who requires the assistance of an interpreter pursuant to section 13-90-204 (1) (a), (1) (b), (1) (c), and (1) (d). In addition, the division of rehabilitation shall make such list available to any appointing authority who requires the assistance of an interpreter pursuant to section 13-90-204 (1) (e).~~ A LIST OF AVAILABLE RESOURCES REGARDING COMMUNICATION ACCESSIBILITY FOR PERSONS WHO ARE DEAF OR HARD OF HEARING, INCLUDING BUT NOT LIMITED TO QUALIFIED INTERPRETERS AND AUXILIARY SERVICES, FOR USE BY AN APPOINTING AUTHORITY PURSUANT TO SECTION 13-90-204. Such list shall contain, but not be limited to, the names of private community programs and agencies that secure qualified interpreters AND AUXILIARY SERVICES for assignment.

(2) Whenever a qualified interpreter OR AUXILIARY SERVICE is required pursuant to section 13-90-204, the appointing authority shall secure such interpreter OR AUXILIARY SERVICE through the ~~interpreter referral resources list distributed or~~ LIST OF AVAILABLE RESOURCES made available AND COORDINATED by the ~~division of rehabilitation~~ COMMISSION.

SECTION 6. 13-90-206, Colorado Revised Statutes, is amended to read:

13-90-206. Use of an intermediary interpreter. If the qualified interpreter makes a determination that he OR SHE is unable to render a satisfactory interpretation without the aid of an intermediary interpreter, the appointing authority may appoint an intermediary interpreter to assist the qualified interpreter.

SECTION 7. 13-90-207 (1), Colorado Revised Statutes, is amended to read:

13-90-207. Requirements to be met prior to commencing proceedings.

(1) Prior to commencing any ~~judicial proceedings or any~~ proceedings pursuant to section 13-90-204 ~~(1) (e)~~ requiring ~~the assistance of~~ a qualified interpreter OR AUXILIARY SERVICES, the following conditions shall be met:

(a) ~~The~~ A QUALIFIED interpreter shall take an oath that he OR SHE shall make a true interpretation in an understandable manner to the best of his OR HER skills, but such oath shall only be required if the entity presiding over the proceeding has been given, by statute, the authority to administer such an oath.

(b) The QUALIFIED interpreter OR AUXILIARY SERVICE shall be in full view and spatially situated to assure effective communication with the ~~hearing-impaired~~ person or persons WHO ARE DEAF OR HARD OF HEARING.

(c) The appointing authority shall make a reasonable attempt to provide ~~an~~ A QUALIFIED interpreter OR AUXILIARY SERVICE that is ~~acceptable~~ EFFECTIVE to the ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING.

SECTION 8. 13-90-208, Colorado Revised Statutes, is amended to read:

13-90-208. Waiver. The right of a ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING to a qualified interpreter OR AUXILIARY SERVICE may not be waived except IN WRITING by a ~~hearing-impaired~~ THE person ~~in writing~~ WHO IS DEAF OR HARD OF HEARING. PRIOR TO EXECUTING SUCH A WAIVER, A PERSON WHO IS DEAF OR HARD OF HEARING MAY HAVE ACCESS TO COUNSEL FOR ADVICE AND SHALL HAVE ACTUAL, FULL KNOWLEDGE OF THE RIGHT TO EFFECTIVE COMMUNICATION. Such waiver ~~shall be~~ IS subject to the approval of counsel, if any, to the ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING and is also subject to the approval of the appointing authority. In no event is the failure of the ~~hearing-impaired~~ person WHO IS DEAF OR HARD OF HEARING to request ~~an~~ A QUALIFIED interpreter OR AUXILIARY SERVICE deemed a waiver of this right.

SECTION 9. 13-90-210, Colorado Revised Statutes, is amended to read:

13-90-210. Compensation. Subject to the appropriations available to the ~~division of rehabilitation~~ COMMISSION, a qualified interpreter OR COMPUTER-AIDED REALTIME TRANSLATION REPORTER ~~appointed~~ PROVIDED pursuant to section 13-90-204 ~~(1) (a), (1) (b), (1) (c), and (1) (d)~~ shall be entitled to compensation for his OR HER services, including waiting time and necessary travel and subsistence expenses. The amount of compensation shall be based on a fee schedule for QUALIFIED interpreters AND AUXILIARY SERVICES established by the ~~division of rehabilitation~~. ~~In the event that available appropriations are not sufficient to cover the compensation required by the fee schedule, such schedule shall be prorated accordingly~~ COMMISSION.

SECTION 10. 26-21-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-21-106. Powers, functions, and duties of the commission - equipment distribution program. (4) THE COMMISSION, IN COLLABORATION WITH THE JUDICIAL DEPARTMENT, SHALL ESTABLISH, MONITOR, COORDINATE, AND PUBLISH A LIST OF AVAILABLE RESOURCES REGARDING COMMUNICATION ACCESSIBILITY FOR PERSONS WHO ARE DEAF OR HARD OF HEARING, INCLUDING BUT NOT LIMITED TO QUALIFIED INTERPRETERS AND AUXILIARY SERVICES, FOR USE BY AN APPOINTING AUTHORITY PURSUANT TO SECTION 13-90-204, C.R.S.

SECTION 11. 18-1.3-701 (1), Colorado Revised Statutes, is amended to read:

18-1.3-701. Judgment for costs and fines. (1) Where any person, association, or corporation is convicted of an offense, or any juvenile is adjudicated a juvenile delinquent for the commission of an act that would have been a criminal offense if committed by an adult, the court shall give judgment in favor of the state of Colorado, the appropriate prosecuting attorney, or the appropriate law enforcement agency and against the offender or juvenile for the amount of the costs of prosecution, the amount of the cost of care, and any fine imposed. No fine shall be imposed for conviction of a felony except as provided in section 18-1.3-401. Such judgments shall be enforceable in the same manner as are civil judgments, and, in addition, the provisions of section 16-11-101.6, C.R.S., and section 18-1.3-702 apply. A county clerk and recorder may not charge a fee for the recording of a transcript or satisfaction of a judgment entered pursuant to this section. Any judgments collected pursuant to this section for fees for interpreters ~~appointed~~ OR AUXILIARY SERVICES PROVIDED pursuant to section 13-90-204, C.R.S., and reimbursed pursuant to section 13-90-210, C.R.S., shall be remitted to the ~~division of rehabilitation~~ COLORADO COMMISSION FOR THE DEAF AND HARD OF HEARING in the department of human services CREATED IN SECTION 26-21-104, C.R.S.

SECTION 12. 13-71-137, Colorado Revised Statutes, is amended to read:

13-71-137. Duties and responsibilities of interpreters for jurors who are deaf or hard of hearing. The court may ~~permit~~ PROVIDE, THROUGH THE LIST OF AVAILABLE RESOURCES COORDINATED THROUGH THE COLORADO COMMISSION FOR THE DEAF AND HARD OF HEARING PURSUANT TO SECTION 26-21-106 (4), C.R.S., a ~~translator~~ QUALIFIED INTERPRETER, AS DEFINED IN SECTION 13-90-202 (10), to assist ~~a deaf juror~~ during a trial ~~after determining the competency of the translator~~ A JUROR WHO IS DEAF OR HARD OF HEARING. In the presence of the jury, the court shall instruct the ~~translator~~ QUALIFIED INTERPRETER to make true ~~literal~~, and complete translations of all court proceedings to the ~~deaf juror~~ WHO IS DEAF OR HARD OF HEARING to the best of the ~~translator's~~ QUALIFIED INTERPRETER'S ability. The ~~translator~~ QUALIFIED INTERPRETER shall be subject to the same orders and admonitions given to the jurors. The court shall permit a ~~translator~~ QUALIFIED INTERPRETER to be present and assist a ~~deaf juror~~ WHO IS DEAF OR HARD OF HEARING during the deliberations of the jury. In the presence of the jury, the court shall instruct the ~~translator~~ QUALIFIED INTERPRETER to refrain from participating in any manner in the deliberation of the jury and to refrain from having any communications with any member of the jury regarding deliberation, except for ~~literal~~ TRUE AND COMPLETE translations of jurors' remarks made during deliberation. A jury verdict reached in the presence of a ~~translator~~ QUALIFIED INTERPRETER, during deliberation, shall be valid.

SECTION 13. Appropriation - adjustment in 2006 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of human services, for the Colorado commission for the deaf and hard of hearing, for the fiscal year beginning July 1, 2006, the sum of one hundred twelve thousand seven hundred forty-five dollars (\$112,745) and 0.5 FTE or so much thereof as may be necessary, for implementation of this act. Of said sum, forty thousand five hundred eighty-seven dollars (\$40,587) shall be for administrative expenditures and

seventy-two thousand one hundred fifty-eight dollars (\$72,158) shall be for contract services for legal interpreters.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the disabled telephone users cash fund created in section 40-17-104 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of human services, to the Colorado commission for the deaf and hard of hearing cash fund created in Section 26-21-107, Colorado Revised Statutes, for the fiscal year beginning July 1, 2006, the sum of one hundred ninety-seven thousand two hundred eighty-two dollars (\$197,282) cash funds and said sum, or so much thereof as may be necessary, is further appropriated as cash funds exempt to the department of human services, Colorado commission for the deaf and hard of hearing, for contract services for legal interpreters.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for trial courts, for the fiscal year beginning July 1, 2006, the sum of thirty-one thousand eight hundred eighty-eight dollars (\$31,888) and 0.3 FTE, or so much thereof as may be necessary, for implementation of this act. Of said sum, seventeen thousand one hundred thirty dollars (\$17,130) and 0.3 FTE shall be for the court-appointed counsel payment and data system and fourteen thousand seven hundred fifty-eight dollars (\$14,758) shall be for court-appointed counsel.

(4) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 2006, shall be adjusted as follows:

(a) The general fund appropriation to the department of human services, services for people with disabilities, division of vocational rehabilitation, appointment of legal interpreters for the hearing impaired, shall be reduced by sixty-four thousand four hundred seventy-one dollars (\$64,471).

(b) The general fund appropriation to the judicial department shall be reduced by eighty thousand one hundred sixty-two dollars (\$80,162). Of said sum, twenty-seven thousand eight hundred seventeen dollars (\$27,817) shall be from trial courts for trial court programs, thirty-six thousand eighty-nine dollars (\$36,089) shall be from trial courts for mandated costs, and sixteen thousand two hundred fifty-six dollars (\$16,256) shall be from probation and related services for offender services.

SECTION 14. Effective date. This act shall only take effect if Senate Bill 06-218 is enacted at the Second Regular Session of the Sixty-fifth General Assembly and becomes law.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 2006