

Judiciary and Law Enforcement: Woods, Chair; Halvorson of Clayton and Renaud.

*Do Pass 3/20*

MAR 7 1985

House File 526

HOUSE FILE 526

JUDICIARY: Small, Chair; Holt and Doyle

*Do Pass 4/9/85 (p. 1272)*

BY HOLVECK, McINTEE, JAY,  
McKEAN, HALVORSON of Clayton,  
and ROSENBERG

Passed House, Date 3-26-85 (p. 1070) Passed Senate, Date 4-17-85 (p. 1437)

Vote: Ayes 94 Nays 0 Vote: Ayes 40 Nays 0

Approved May 15, 1985

# A BILL FOR

1 An Act relating to interpreters for certain hearing impaired  
2 persons.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HOUSE FILE 526  
FISCAL NOTE

REQUESTED BY REPRESENTATIVE HOLVECK

In compliance with a written request received February 22, 1985, a fiscal note for HOUSE FILE 526 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 526 requires a peace officer who detains a hearing impaired person to procure a qualified interpreter at the earliest possible time, unless the hearing impaired person knowingly, voluntarily, and intelligently waives the right to an interpreter in writing by executing a form prescribed by the Iowa department of health and the Iowa county attorneys association. Breath screening or chemical tests of body substances may be administered prior to the arrival of a interpreter; however, upon the arrival of the interpreter the officer who requested the test shall explain through the interpreter information about the test.

Statewide statistics on the number of hearing impaired persons detained annually are not available, but it is estimated that 100 hearing impaired persons are detained. It is further estimated that the average length of interpreting and travel time would each be one hour, and the average hourly fee would be \$15. The total cost to cities and counties is estimated to be approximately \$3,000 annually.

Source: Iowa Department of Health  
FILED MARCH 25, 1985

(LSB 2444H, JMN)  
BY DENNIS PROUTY, FISCAL DIRECTOR

1 Section 1. Section 622B.1, subsection 1, paragraph a, Code  
2 1985, is amended to read as follows:

3 a. "Hearing impaired person" means a person whose hearing  
4 is so impaired so that the person cannot understand oral  
5 communication when spoken in a normal conversational tone and  
6 must rely primarily on sign language to communicate, and also  
7 includes a person who ~~because of a speech or other physical~~  
8 ~~impairment~~, is unable to orally communicate with other persons  
9 and ~~therefore~~ relies primarily on sign language to  
10 communicate.

11 Sec. 2. Section 804.31, Code 1985, is amended by striking  
12 the section and inserting in lieu thereof the following:

13 804.31 ARREST OF HEARING IMPAIRED PERSON -- USE OF  
14 INTERPRETERS.

15 When a person is detained for questioning or arrested for  
16 an alleged violation of a law or ordinance and there is reason  
17 to believe that the person is hearing impaired, the peace  
18 officer making the arrest or taking the person into custody or  
19 any other officer detaining the person shall determine if the  
20 person is a hearing impaired person as defined in section  
21 622B.1. If the officer so determines, the officer, at the  
22 earliest possible time and prior to commencing any custodial  
23 interrogation of the person, shall procure a qualified  
24 interpreter in accordance with section 622B.2 and the rules  
25 adopted by the supreme court under section 622B.1 unless the  
26 hearing impaired person knowingly, voluntarily, and  
27 intelligently waives the right to an interpreter in writing by  
28 executing a form prescribed by the Iowa department of health  
29 and the Iowa county attorneys association. The interpreter  
30 shall interpret the officer's warnings of constitutional  
31 rights and protections and all other warnings, statements, and  
32 questions spoken or written by any officer, attorney, or other  
33 person present and all statements and questions communicated  
34 in sign language by the hearing impaired person.

35 This section does not prohibit the request for and

1 administration of a preliminary breath screening test or the  
2 request for and administration of a chemical test of a body  
3 substance or substances under chapter 321B prior to the  
4 arrival of a qualified interpreter for a hearing impaired  
5 person who is believed to have committed a violation of  
6 section 321.281. However, upon the arrival of the interpreter  
7 the officer who requested the chemical test shall explain  
8 through the interpreter the reason for the testing, the  
9 consequences of the person's consent or refusal, and the  
10 ramifications of the results of the test, if one was  
11 administered.

12 When an interpreter is not readily available and the  
13 hearing impaired person's identity is known, the person may be  
14 released by the law enforcement agency into the temporary  
15 custody of a reliable family member or other reliable person  
16 to await the arrival of the interpreter, if the person is  
17 eligible for release on bail and is not believed to be an  
18 immediate threat to the person's own safety or the safety of  
19 others.

20 An answer, statement, or admission, oral or written, made  
21 by a hearing impaired person in reply to a question of a law  
22 enforcement officer or any other person having a prosecutorial  
23 function in a criminal proceeding is not admissible in court  
24 and shall not be used against the hearing impaired person if  
25 that answer, statement, or admission was not made or elicited  
26 through a qualified interpreter, unless the hearing impaired  
27 person had waived the right to an interpreter pursuant to this  
28 section. In the event of a waiver and criminal proceeding,  
29 the court shall determine whether the waiver and any  
30 subsequent answer, statement, or admission made by the hearing  
31 impaired person were knowingly, voluntarily, and intelligently  
32 made.

33 When communication occurs with a person through an  
34 interpreter pursuant to this section, all questions or  
35 statements and responses shall be relayed through the

1 interpreter. The role of the interpreter is to facilitate  
2 communication between the hearing and hearing impaired  
3 parties. An interpreter shall not be compelled to answer any  
4 question or respond to any statement that serves to violate  
5 that role at the time of questioning or arrest or at any  
6 subsequent administrative or judicial proceeding.

7 An interpreter procured under this section shall be paid a  
8 reasonable fee and expenses by the governmental subdivision  
9 funding the law enforcement agency that procured the  
10 interpreter.

11 EXPLANATION

12 This bill amends the definition of "hearing impaired  
13 person" and requires the department of health and the Iowa  
14 county attorneys association to prescribe a form for a hearing  
15 impaired person to waive the right to an interpreter in the  
16 event of an arrest. The interpreter is required to interpret  
17 the communication between the parties. If a breath screening  
18 test or chemical test is administered prior to the arrival of  
19 an interpreter the law enforcement officer is required to  
20 explain the reason, consequences, and ramifications of the  
21 test through the interpreter upon the arrival of the  
22 interpreter.

23 The law enforcement agency is permitted to release the  
24 hearing impaired person to family custody if an interpreter is  
25 not available and the person's identity is known and is not  
26 considered a threat.

27 The bill requires the governmental subdivision funding the  
28 law enforcement agency procuring the interpreter to pay a  
29 reasonable fee to and the expenses of the interpreter.

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HOUSE FILE 526

AN ACT

RELATING TO INTERPRETERS FOR CERTAIN HEARING IMPAIRED PERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 622B.1, subsection 1, paragraph a, Code 1985, is amended to read as follows:

a. "Hearing impaired person" means a person whose hearing is so impaired so that the person cannot understand oral communication when spoken in a normal conversational tone and must rely primarily on sign language to communicate, and also includes a person who, ~~because of a speech or other physical impairment,~~ is unable to orally communicate with other persons and therefore relies primarily on sign language to communicate.

Sec. 2. Section 804.31, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

804.31 ARREST OF HEARING IMPAIRED PERSON -- USE OF INTERPRETERS.

When a person is detained for questioning or arrested for an alleged violation of a law or ordinance and there is reason to believe that the person is hearing impaired, the peace officer making the arrest or taking the person into custody or any other officer detaining the person shall determine if the person is a hearing impaired person as defined in section 622B.1. If the officer so determines, the officer, at the earliest possible time and prior to commencing any custodial interrogation of the person, shall procure a qualified interpreter in accordance with section 622B.2 and the rules adopted by the supreme court under section 622B.1 unless the hearing impaired person knowingly, voluntarily, and intelligently waives the right to an interpreter in writing by executing a form prescribed by the Iowa department of health and the Iowa county attorneys association. The interpreter shall interpret the officer's warnings of constitutional

rights and protections and all other warnings, statements, and questions spoken or written by any officer, attorney, or other person present and all statements and questions communicated in sign language by the hearing impaired person.

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter 321B prior to the arrival of a qualified interpreter for a hearing impaired person who is believed to have committed a violation of section 321.281. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

When an interpreter is not readily available and the hearing impaired person's identity is known, the person may be released by the law enforcement agency into the temporary custody of a reliable family member or other reliable person to await the arrival of the interpreter, if the person is eligible for release on bail and is not believed to be an immediate threat to the person's own safety or the safety of others.

An answer, statement, or admission, oral or written, made by a hearing impaired person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in a criminal proceeding is not admissible in court and shall not be used against the hearing impaired person if that answer, statement, or admission was not made or elicited through a qualified interpreter, unless the hearing impaired person had waived the right to an interpreter pursuant to this section. In the event of a waiver and criminal proceeding, the court shall determine whether the waiver and any subsequent answer, statement, or admission made by the hearing impaired person were knowingly, voluntarily, and intelligently made.

When communication occurs with a person through an interpreter pursuant to this section, all questions or statements and responses shall be relayed through the interpreter. The role of the interpreter is to facilitate communication between the hearing and hearing impaired parties. An interpreter shall not be compelled to answer any question or respond to any statement that serves to violate that role at the time of questioning or arrest or at any subsequent administrative or judicial proceeding.

An interpreter procured under this section shall be paid a reasonable fee and expenses by the governmental subdivision funding the law enforcement agency that procured the interpreter.

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DONALD D. AVENSON  
Speaker of the House

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ROBERT T. ANDERSON  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 526, Seventy-first General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved May 15, 1985

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TERRY E. BRANSTAD  
Governor