

FEB 18 1997

JUDICIARY

HOUSE FILE

271

BY NELSON

Passed House, Date _____ Passed Senate, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to the use of foreign language interpreters in
 2 the investigations of criminal offenses and providing for
 3 payment of fees.

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

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HF 271

1 Section 1. NEW SECTION. 804.32 ARREST OR QUESTIONING OF
2 NON-ENGLISH-SPEAKING PERSON -- USE OF INTERPRETERS -- FEE.

3 1. When a person is questioned, detained for questioning,
4 or arrested for alleged commission of a public offense and
5 there is reason to believe that the person cannot speak or
6 understand the English language, the peace officer making the
7 arrest or taking the person into custody or any other officer
8 detaining or questioning the person shall determine if the
9 person cannot speak or understand the English language. If
10 the officer so determines, the officer may procure, but shall
11 procure prior to commencing any custodial interrogation of a
12 person, an interpreter qualified under the rules adopted by
13 the supreme court under section 622A.7. The interpreter shall
14 interpret the officer's warnings of constitutional rights and
15 protections and all other warnings, statements, and questions
16 spoken or written by any officer, attorney, or other person
17 present and all statements and questions communicated in the
18 foreign language by the person who cannot speak or understand
19 the English language.

20 2. When communication occurs with a person through an
21 interpreter pursuant to this section, all questions or
22 statements and responses shall be relayed through the
23 interpreter. The role of the interpreter is to facilitate
24 communication between the law enforcement officer or officers,
25 other parties to any questioning or taking part in effecting
26 the arrest or detention, and the person who cannot speak or
27 understand the English language. An interpreter shall not be
28 compelled to answer any question or respond to any statement
29 that serves to violate that role at the time of questioning or
30 arrest or at any subsequent administrative or judicial
31 proceeding.

32 3. If a person waives the presence of an interpreter
33 pursuant to this section, any answer, statement, or admission,
34 oral or written, made by the person in reply to a question of
35 a law enforcement officer or any other person having a

1 prosecutorial function in a criminal proceeding is admissible
2 in court and may be used against the person. In the event of
3 a waiver and criminal proceeding, the court shall determine
4 whether the waiver and any subsequent answer, statement, or
5 admission made by the person was knowingly, voluntarily, and
6 intelligently made.

7 4. This section does not prohibit the request for and
8 administration of a preliminary breath screening test or the
9 request for and administration of a chemical test of a body
10 substance or substances under chapter 321J prior to the
11 arrival of a qualified interpreter for a person who cannot
12 speak or understand the English language and who is believed
13 to have committed a violation of section 321J.2. However,
14 upon the arrival of the interpreter the officer who requested
15 the chemical test shall explain through the interpreter the
16 reason for the testing, the consequences of the person's
17 consent or refusal, and the ramifications of the results of
18 the test, if one was administered.

19 5. An interpreter procured under this section shall be
20 paid a reasonable fee and expenses by the governmental
21 subdivision funding the law enforcement agency that procured
22 the interpreter. Any fees or expenses paid by the
23 governmental subdivision are recoverable by the city or county
24 as a cost of prosecution under section 815.13 from a person
25 charged in the criminal case, unless the person is found not
26 guilty.

27 EXPLANATION

28 This bill provides for the securing of a qualified
29 interpreter for purposes of conducting questioning of persons
30 who are unable to speak the English language regarding a
31 criminal charge, whether the questioning is prior or incident
32 to an arrest, and for the recovery of the costs of securing
33 the interpreter from a person who is charged and convicted of
34 the criminal charge.

35 The officer who arrests the person, detains the person, or

1 otherwise commences questioning of a person regarding a
2 criminal charge is to make a determination of whether the
3 person is able to speak or understand the English language.
4 If the officer determines that person cannot speak or
5 understand the English language, the officer is permitted to
6 secure the services of an interpreter. If the questioning
7 takes the form of custodial interrogation, the officer must
8 secure an interpreter if the officer has determined that the
9 person cannot speak or understand English. All questions or
10 statements are to be relayed through the interpreter and the
11 interpreter cannot be compelled to answer any question or
12 respond to any statement that violates the interpreter role.
13 If a person knowingly, voluntarily, and intelligently waives
14 the presence of an interpreter, any answer, statement, or
15 admission made by the person in reply to a question of a law
16 enforcement officer is admissible in court.

17 The decision that the services of an interpreter are needed
18 does not preclude the request for and administration of a
19 preliminary breath screening test or other chemical tests
20 under the OWI provisions of the Code prior to the arrival of
21 the interpreter. Once the interpreter arrives, however, the
22 officer's warnings, the consequences of consent or refusal,
23 and the ramifications of the results of a test are to be
24 explained through the interpreter.

25 An interpreter is to be paid a reasonable fee and expenses
26 by the governmental subdivision funding the agency that
27 procured the interpreter. Any fees or expenses paid are
28 recoverable as a cost of prosecution from a person charged,
29 unless the person is found not guilty or the action is
30 dismissed.

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