

CHAPTER NO. 245.

SENATE BILL NO. 278

INTRODUCED BY THOMAS, DUSSAULT, ROSENTHAL, O'CONNELL,
MEYER, FABREGA, VAN VALKENBURG, TROPILA

IN THE SENATE

January 29, 1979	Introduced and referred to Committee on Judiciary.
February 10, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Motion pass consideration.
February 15, 1979	Second reading, do pass.
February 16, 1979	Considered correctly engrossed.
February 17, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
March 6, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 10, 1979	Returned from second house. Concurred in as amended.
March 12, 1979	Second reading, pass consideration.
March 13, 1979	Second reading, amendments adopted.
March 14, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

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Senators BILL NO. *278*
INTRODUCED BY *Thomas Messauz* *Donna O'Connell*
Meyer *George Van Valkenburg* *Gregoire*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY PROVIDE FOR THE USE OF INTERPRETERS FOR THE DEAF IN CERTAIN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS; TO REPEAL SECTION 3-1-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to [this act].

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired

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as to prohibit the person from understanding oral communications when spoken in a normal conversational tone. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter certified by the department of social and rehabilitation services.

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

Section 3. Deaf person as participant in judicial or administrative proceeding -- interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in

1 preparation with counsel.

2 (2) At all stages in any proceeding before any agency
3 of the state or governing body or agency of a local
4 government in which a deaf person is a principal party in
5 interest, either as a complainant, defendant, witness, or
6 supplicant, the agency or governing body shall appoint a
7 qualified interpreter to interpret the proceedings to the
8 deaf person and to interpret his testimony or statements.

9 (3) (a) In any proceedings in which a deaf person may
10 be subjected to confinement or criminal sanction or in any
11 proceeding preliminary thereto, including a coroner's
12 inquest, grand jury proceedings, and proceedings relating to
13 mental health commitments, the presiding judicial officer
14 shall appoint a qualified interpreter to assist the deaf
15 person throughout the proceedings.

16 (b) Upon apprehending or arresting a deaf person for
17 an alleged violation of a criminal law and prior to
18 interrogating or taking a statement of the deaf person, the
19 arresting law enforcement official shall make available to
20 the person, at the earliest possible time, a qualified
21 interpreter to assist the person throughout such
22 interrogation or taking of a statement.

23 (c) No statement, written or oral, made by a person
24 who is deaf in reply to a question of a law enforcement
25 officer or any other person having a prosecutorial function

1 in any criminal or quasi-criminal proceeding may be used
2 against that deaf person unless either the statement was
3 made or elicited through a qualified interpreter and was
4 made knowingly, voluntarily, and intelligently or, in the
5 case of waiver, the court makes a special finding that any
6 statement made by the deaf person was made knowingly,
7 voluntarily, and intelligently.

8 Section 4. Preliminary determination. The appointing
9 authority may not appoint a qualified interpreter in any
10 case until he makes a preliminary determination that the
11 qualified interpreter is able to accurately communicate with
12 and translate information to and from the deaf person in the
13 case.

14 Section 5. Intermediary interpreter to be used. If a
15 qualified interpreter states that he is unable to render a
16 satisfactory interpretation and that an intermediary
17 interpreter will improve the quality of interpretation, the
18 appointing authority shall appoint an intermediary
19 interpreter to assist the qualified interpreter subject to
20 the same provisions that govern a qualified interpreter
21 under [this act].

22 Section 6. Interpreter in full view. In any action or
23 proceeding in which an interpreter is required to be
24 appointed, the court or administrative authority may not
25 commence proceedings until the appointed interpreter is in

1 full view of and spatially situated to assure proper
2 communication with the deaf person or persons involved as
3 participants.

4 Section 7. Coordination of interpreter requests. (1)
5 Whenever an appointing authority is required to appoint an
6 interpreter, the authority shall request the department of
7 social and rehabilitation services to furnish the authority
8 with a qualified interpreter at a time and place and for a
9 period specified by the authority. If the choice of
10 qualified interpreter does not meet the needs or wishes of
11 the deaf person, the appointing authority shall appoint
12 another qualified interpreter.

13 (2) The Montana association of the deaf may assist the
14 department of social and rehabilitation services in
15 developing standards for the certification of interpreters
16 and in preparing and continually updating a listing of
17 qualified and available interpreters.

18 Section 8. Oath of interpreter. Every interpreter
19 appointed to interpret for a deaf person, before entering
20 upon his duties, shall take an oath that he will make a true
21 interpretation in an understandable manner to the person for
22 whom he is appointed and that he will repeat the statements
23 of such person in the English language to the best of his
24 skill and judgment.

25 Section 9. Compensation. An interpreter appointed to

1 interpret for the deaf is entitled to receive a reasonable
2 fee for his services, together with his actual expenses for
3 travel and transportation. The appointing authority shall
4 set the fee. When the interpreter is appointed by a court,
5 the fee shall be paid out of the county general fund; and
6 when the interpreter is otherwise appointed, the fees shall
7 be paid out of funds available to the appointing authority.

8 Section 10. Waiver. The right of a deaf person to an
9 interpreter may not be waived except by a deaf person who
10 initiates a request for a waiver in writing. Such waiver is
11 subject to the approval of counsel to the deaf person, if
12 existent, and is subject to the approval of the appointing
13 authority.

14 Section 11. Privileged communications. Any information
15 that the interpreter gathers from the deaf person pertaining
16 to any proceeding then pending shall at all times remain
17 confidential and privileged, on an equal basis with the
18 attorney-client privilege, unless such deaf person desires
19 that such information be communicated to other persons.

20 Section 12. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

1 Section 13. Repealer. Section 3-1-316, MCA, is
2 repealed.

3 Section 14. Effective date. This act is effective on
4 passage and approval.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 278

INTRODUCED BY THOMAS, DUSSAULT, ROSENTHAL, O'CONNELL,
MEYER, FABREGA, VAN VALKENBURG, TROPILA

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY PROVIDE
FOR THE USE OF INTERPRETERS FOR THE DEAF IN CERTAIN
ADMINISTRATIVE OR JUDICIAL PROCEEDINGS; TO REPEAL SECTION
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Policy. It is the policy of this state to
secure the constitutional rights of deaf persons who,
because of impairment of hearing or speech, are unable to
readily understand or communicate spoken language and who
consequently cannot be fully protected in legal proceedings
unless qualified interpreters are available to assist them.

Section 2. Definitions. As used in [this act], the
following definitions apply:

(1) "Appointing authority" means the presiding judge
or justice of any court, the chairman of any board,
commission, or authority, the director or commissioner of
any department or agency, or any other person presiding at
any hearing or other proceeding in which a qualified
interpreter is required pursuant to [this act].

(2) "Deaf person" means a person whose hearing is

totally impaired or whose hearing is so seriously impaired
as to prohibit the person from understanding oral
communications when-spoken-in-a-normal-conversational-tone.
The term further includes, but is not limited to, a person
who, because of loss of hearing, cannot communicate spoken
language.

(3) "Principal party in interest" means a person who
is a named party in any proceeding or who will be directly
affected by the decision or action which may be made or
taken.

(4) "Qualified interpreter" means an interpreter
certified LISTED by the department of social and
rehabilitation services AS PROVIDED IN [SECTION 7].

(5) "Intermediary interpreter" means a knowledgeable
deaf person who, because of his intimate acquaintance with
deaf persons who use mainly natural gestures for
communicating, can be used as an intermediary between the
deaf person and a qualified interpreter.

Section 3. Deaf person as participant in judicial or
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(1) In any case before any court or a grand jury in
which a deaf person is a party, either as a complainant,
defendant, or witness, the court shall appoint a qualified
interpreter to interpret the proceedings to the deaf person

1 and interpret his testimony or statements and to assist in
2 preparation with counsel.

3 (2) At all stages in any proceeding ~~DE A JUDICIAL OR~~
4 ~~QUASI-JUDICIAL NATURE~~ before any agency of the state or
5 governing body or agency of a local government in which a
6 deaf person is a principal party in interest, either as a
7 complainant, defendant, witness, or supplicant, the agency
8 or governing body shall appoint a qualified interpreter to
9 interpret the proceedings to the deaf person and to
10 interpret his testimony or statements.

11 (3) (a) In any proceedings in which a deaf person may
12 be subjected to confinement or criminal sanction or in any
13 proceeding preliminary thereto, including a coroner's
14 inquest, grand jury proceedings, and proceedings relating to
15 mental health commitments, the presiding judicial officer
16 shall appoint a qualified interpreter to assist the deaf
17 person throughout the proceedings.

18 (b) Upon apprehending or arresting a deaf person for
19 an alleged violation of a criminal law and prior to
20 interrogating or taking a statement of the deaf person, the
21 arresting law enforcement official shall make available to
22 the person, at the earliest possible time, a qualified
23 interpreter to assist the person throughout such
24 interrogation or taking of a statement.

25 (c) No statement, written or oral, made by a person

1 who is deaf in reply to a question of a law enforcement
2 officer or any other person having a prosecutorial function
3 in any criminal or quasi-criminal proceeding may be used
4 against that deaf person unless either the statement was
5 made or elicited through a qualified interpreter and was
6 made knowingly, voluntarily, and intelligently or, in the
7 case of waiver, the court makes a special finding that any
8 statement made by the deaf person was made knowingly,
9 voluntarily, and intelligently.

10 Section 4. Preliminary determination. The appointing
11 authority may not appoint a qualified interpreter in any
12 case until he makes a preliminary determination that the
13 qualified interpreter is able to accurately communicate with
14 and translate information to and from the deaf person in the
15 case.

16 Section 5. Intermediary interpreter to be used. If a
17 qualified interpreter states that he is unable to render a
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19 interpreter will improve the quality of interpretation, the
20 appointing authority shall appoint an intermediary
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22 the same provisions that govern a qualified interpreter
23 under [this act].

24 Section 6. Interpreter in full view. In any action or
25 proceeding in which an interpreter is required to be

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 2 commence proceedings until the appointed interpreter is in
 3 full view of and spatially situated to assure proper
 4 communication with the deaf person or persons involved as
 5 participants.

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 7 whenever an appointing authority is required to appoint an
 8 interpreter, the authority shall request the department of
 9 social and rehabilitation services to furnish the authority
 10 with a ~~LIST OF~~ qualified interpreter ~~INTERPRETERS~~ ~~at-a--time~~
 11 ~~and--place--and--for-a-period-specified-by-the-authority.~~ If
 12 the choice of qualified interpreter ~~INTERPRETERS~~ does not
 13 meet the needs or wishes of the deaf person, the appointing
 14 authority shall appoint another qualified interpreter.

15 (2) The Montana association of the deaf ~~may-assist AND~~
 16 ~~THE MONTANA REGISTRY OF INTERPRETERS FOR THE DEAF SHALL~~
 17 ~~PROVIDE~~ the department of social and rehabilitation services
 18 ~~in--developing--standards--for--the--certification--of~~
 19 ~~interpreters-and-in-preparing-and-continually-updating WITH~~
 20 a listing LIST of qualified and available interpreters.

21 ~~(3) THE ONLY FUNCTION OF THE DEPARTMENT OF SOCIAL AND~~
 22 ~~REHABILITATION SERVICES IS TO MAINTAIN THE LIST REFERRED TO~~
 23 ~~IN SUBSECTION (2).~~

24 Section 8. Oath of interpreter. Every interpreter
 25 appointed to interpret for a deaf person, before entering

1 upon his duties, shall take an oath that he will make a true
 2 interpretation in an understandable manner to the person for
 3 whom he is appointed and that he will repeat the statements
 4 of such person in the English language to the best of his
 5 skill and judgment.

6 Section 9. Compensation. An interpreter appointed to
 7 interpret for the deaf is entitled to receive a reasonable
 8 fee for his services, together with his actual expenses for
 9 travel and transportation. The appointing authority shall
 10 set the fee. When the interpreter is appointed by a court,
 11 the fee shall be paid out of the county general fund; and
 12 when the interpreter is otherwise appointed, the fees shall
 13 be paid out of funds available to the appointing authority.

14 Section 10. waiver. The right of a deaf person to an
 15 interpreter may not be waived except by a deaf person who
 16 initiates a request for a waiver in writing. Such waiver is
 17 subject to the approval of counsel to the deaf person, if
 18 existent, and is subject to the approval of the appointing
 19 authority.

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 21 that the interpreter gathers from the deaf person pertaining
 22 to any proceeding then pending shall at all times remain
 23 confidential and privileged, on an equal basis with the
 24 attorney-client privilege, unless such deaf person desires
 25 that such information be communicated to other persons.

1 Section 12. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
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5 made or elicited through a qualified interpreter and was
6 made knowingly, voluntarily, and intelligently or, in the
7 case of waiver, the court makes a special finding that any
8 statement made by the deaf person was made knowingly,
9 voluntarily, and intelligently.

10 ~~(D) THIS SUBSECTION (3) DOES NOT APPLY TO~~
11 ~~APPREHENSIONS, ARRESTS, OR STATEMENTS INVOLVING A VIOLATION~~
12 ~~OF THE TRAFFIC LAWS OF MONTANA.~~

13 Section 4. Preliminary determination. The appointing
14 authority may not appoint a qualified interpreter in any
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17 and translate information to and from the deaf person in the
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8 participants.

9 Section 7. Coordination of interpreter requests. (1)
10 Whenever an appointing authority is required to appoint an
11 interpreter, the authority shall request the department of
12 social and rehabilitation services to furnish the authority
13 with a LISI DE qualified interpreter INTERPRETERS at-a-time
14 and--place--and--for-a-period-specified-by-the-authority. If
15 the choice of qualified interpreter INTERPRETERS does not
16 meet the needs or wishes of the deaf person, the appointing
17 authority shall appoint another qualified interpreter.

18 (2) The Montana association of the deaf may-assist AND
19 THE MONTANA REGISTRY OF INTERPRETERS FOR THE DEAF SHALL
20 PROVIDE the department of social and rehabilitation services
21 in--developing--standards--for--the--certification--of
22 interpreters--and--in--preparing--and--continually--updating WITH
23 a listing LISI of qualified and available interpreters.

24 (3) THE ONLY FUNCTION OF THE DEPARTMENT OF SOCIAL AND
25 REHABILITATION SERVICES IS TO MAINTAIN THE LISI REFERRED TO

1 IN SUBSECTION (2).

2 Section 8. Oath of interpreter. Every interpreter
3 appointed to interpret for a deaf person, before entering
4 upon his duties, shall take an oath that he will make a true
5 interpretation in an understandable manner to the person for
6 whom he is appointed and that he will repeat the statements
7 of such person in the English language to the best of his
8 skill and judgment.

9 Section 9. Compensation. An interpreter appointed to
10 interpret for the deaf is entitled to receive a reasonable
11 fee for his services, together with his actual expenses for
12 travel and transportation. The appointing authority shall
13 set the fee. When the interpreter is appointed by-a-court
14 IN A CRIMINAL PROCEEDING, the fee shall be paid out of the
15 county general fund; and when the interpreter is otherwise
16 appointed, the fees shall be paid out of funds available to
17 the appointing authority.

18 Section 10. Waiver. The right of a deaf person to an
19 interpreter may not be waived except by a deaf person who
20 initiates--a-request-for REQUESTS a waiver in writing. Such
21 waiver is subject to the approval of counsel to the deaf
22 person, if existent, and is subject to the approval of the
23 appointing authority.

24 Section 11. Privileged communications. Any information
25 that the interpreter gathers from the deaf person pertaining

1 to any proceeding then pending shall at all times remain
2 confidential and privileged, on an equal basis with the
3 attorney-client privilege, unless such deaf person desires
4 that such information be communicated to other persons.

5 Section 12. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

11 Section 13. Repealer. Section 3-1-316, MCA, is
12 repealed.

13 Section 14. Effective date. This act is effective on
14 passage and approval.

-End-